Supreme Court, U.S.
FILED

No. 97 -- (1)

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In The

Supreme Court of the United States

October Term, 1997

ROBERT LONG and SHARON LONG, individually and as parents and next friends of minor Daniel Long, DANIEL LONG, JOHNNY MENDOZA, SR. and MIRIAM MENDOZA individually and as parents and next friends of minor Johnny Mendoza, Jr., and JOHNNY MENDOZA, Jr.

Petitioners,

vs.

SCHOOL BOARD OF,
ALACHUA COUNTY, FLORIDA, and
K-III Communications
Corporation

Respondents.

Petition for a Writ of Certiorari
to the District Court of Appeal of Florida, First District

PETITION FOR A WRIT OF CERTIORARI

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27pp

QUESTION PRESENTED FOR REVIEW

Does the State deprive minor school children and their parents of constitutionally protected liberty interests without due process of law in violation of the Fourteenth Amendment to the United States Constitution to require the children against their consent and that of their parents to be a daily audience of television commercials especially targeted to children as a condition of attending public schools operated by the State when the purpose of the State in requiring the audience is to obtain the free use of television equipment for the schools and the use of a daily public affairs television program in which the commercials are seamlessly integrated and which are not otherwise a part of the required curriculum or a graduation requirement of any student?

LIST OF ALL PARTIES TO THE PROCEEDING

Robert Long and Sharon Long, individually and as parents and next friends of minor Daniel Long, Daniel Long, Johnny Mendoza, Sr. and Miriam Mendoza individually and as parents and next friends of minor Johnny Mendoza, Jr., and Johnny Mendoza, Jr.

Former plaintiffs, Darnell Rhea, Ralph Hess, John Griner, Kathryn Griner and Joshua Griner.

Respondents School Board of Alachua County, Florida and K-III Communications Corporation. The predecessor to K-III was Whittle Communications, L.P.

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ORDER BELOW

The Order to be reviewed is:

Decision of District Court of Appeal, First District of Florida (Appendix A), affirming without opinion decision of circuit court of the Eighth Judicial Circuit of Florida (Appendix B).

STATEMENT OF JURISDICTION

(i) Date of Entry of Judgment to be Reviewed:

Dec. 17, 1997

(ii) Reliance on Rule 12.3:

None

(iii) Statutory Provision Believed to Confer Jurisdiction on the Court:

28 U.S.C. § 1257

(iv) Constitutional and Statutory Provisions

Involved:

Fourteenth Amendment, United States Constitution:

"No State Shall. . . deprive any person of . . . liberty. . . without due process of law."

STATEMENT OF CASE

Facts Material to the Questions Presented

K-III Communications Corporation, a successor to Whittle Communications, L.P., (hereinafter referred to as K-III), produces a daily ten minute public affairs program into which it seamlessly integrates two minutes of commercial television advertisements targeted to school children and featuring products such as candy and athletic shoes. This integrated public affairs commercial program is known as Channel One. K-III markets Channel One to public schools throughout the United States as a package which mandates the daily Channel One program, related products and the installation of television equipment in

schools for use in class rooms to show Channel One and as the schools otherwise choose. In exchange, the contracting schools involved in this case agreed to provide all the children in the school in a home room or a regularly scheduled class to be a daily audience for Channel One, including the commercial advertisements. If a school fails to perform, K-III removes the equipment from the school.

The School Board of Alachua County, Florida (hereinafter referred to as STATE) entered into a district contract with K-III (or its predecessor), and several of STATE's schools in Alachua County, Florida entered into school agreements with K-III. Petitioners are former students of these schools and their parents. At the time this action commenced the children were minors and were compelled against their consent or that of their parents to be in K-II's daily Channel One audience as a condition of attending STATE's free public schools. STATE did not

have any alternative educational program for children who objected to being a compelled audience of the daily Channel One commercial advertisements as a condition of attending STATE's schools, (or whose parents objected), and did not inform the minor children or their parents that children did not have to remain in the daily Channel One audiences if they or their parents objected. STATE did not include any aspect of the daily Channel One program within any course in its curriculum and did not include the content as a graduation requirement for any student.

The parents of petitioner Daniel Long objected to the compelled presence of their son in K-III's daily Channel One audience, and on an *ad hoc* basis Daniel's principal permitted Daniel to sit in the principal's office when the daily Channel One program was shown. STATE provided no alternative educational program for Daniel while he was in the principal's office. This isolation so

embarrassed and humiliated Daniel before his classmates that his parents subordinated their objections to STATE's compulsion of their son to be in the daily Channel One audience to their son's emotional well being, and permitted Daniel to return to the daily Channel One audience in his last years of high school.

Petitioners who were minor children when this litigation commenced have now graduated and STATE discontinued its Channel One contracts in Alachua County, Florida in 1996.

Petitioners brought an action under 42 U.S.C. §1983 for declaratory and injunctive relief and damages, claiming that STATE's practices deprived them of protected liberties without due process of law. On December 11, 1996, the circuit court of the eighth judicial circuit of Florida granted STATE's and K-III's motions for summary judgment, holding that STATE possessed the power to impose the Channel One contract upon

Petitioners without violating rights guaranteed by the United States Constitution. (Exhibit 2).

Petitioners appealed to the District Court of Appeal, First District of Florida, seeking reversal on the specific grounds that STATE's practice violated Petitioner's Fourteenth Amendment rights. On December 17, 1997, that Court affirmed the circuit court's decision without issuing a written opinion. (Exhibit 1). Under Article V, Florida Constitution, such a judgment is not reviewable by the Florida Supreme Court and constitutes a "decree rendered by the highest court of a State in which a decision could be had" within the meaning of 28 U.S.C. § 1257(a).

REASONS FOR GRANTING THE WRIT

QUESTION PRESENTED

Does the State deprive minor school children and their parents of constitutionally protected liberty interests without due process of law in violation of the Fourteenth

Amendment to the United States Constitution to require the children against their consent and that of their parents to be a daily audience of television commercials especially targeted to children as a condition of attending public schools operated by the State when the purpose of the State in requiring the attendance is to obtain the free use of television equipment for the schools and the use of a daily public affairs television program in which the commercials are seamlessly integrated and which are not otherwise a part of the required curriculum or a graduation requirement of any student?

FIRST REASON TO ALLOW THE WRIT

This court may take judicial notice of the fact that K-III's Channel One program has been marketed to schools throughout the United States and has been the source of appellate litigation in at least four of them, including this case from Florida. The other three are California, *Dawson v. East Side Union High School*, 28 Cal.

App. 4th Dist. 998, 34 Cal. Rptr. 2d 108 (Cal. 6th Dist. 1994); North Carolina, *State v. Whittle Communication*, 420 S.E. 2d 556 (N.C. 1991), and Tennessee, *Wallace v. Knox County Board of Education*, Case No. 92-6195 (unpublished) United States Court of Appeals for the Sixth Circuit (1993). Channel One has also been subjected to extensive academic criticism including, FOX, ROY F., HARVESTING MINDS: HOW TV COMMERCIALS CONTROL KIDS, at 156-157 (1996).

Petitioners readily concede that STATE possesses wide discretion in prescribing curriculums and standards of dress and decorum in state supported public schools. Nevertheless the Constitution imposes limits upon this discretion, and Petitioners respectfully submit that the practice challenged in this action goes beyond the limits. In particular, these practices violated the liberties of children and parents in childrearing, family and schooling decisions protected by the Fourteenth Amendment within

the ambit of liberties acknowledged in prior decisions of this Court, including: *Parham v. J.R.* (1979) U.S. 584, 600, 99 S.Ct. 2493, 2503, 61 L.Ed.2d 101; *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15; *Meyer v. Nebraska* (1923) 262 U.S. 390, 402, 43 S.Ct. 625, 628 67 L.Ed. 1042; *Pierce v. Society of Sisters* (1925) 268 U.S. 510, 534, 45 S.Ct. 571, 69 L.Ed. 1070, and *M.L.B. v. S.L.J.*_____U.S.___(1996), 117 S.Ct. 555, 136 L.Ed. 2d 473.

Petitioners respectfully submit that STATE's claim to the power to expose the minds of children to commercial advertisements as a means of raising money for the State raises a spectre of propagandizing children that is reminiscent of some of the most odious state driven propaganda of the century. In the pleadings in this case Petitioners also objected to political propaganda in the content of the Channel One public affairs programming, but this petition is solely directed to state compelled exposure to economic propaganda in the form

of commercial advertisements targeted directly to the minds of children.

Petitioners submit the need of this Court to review this STATE practice of compelling minor school children to be exposed to economic propaganda as a means of financing STATE's programs as the first reason to grant the writ.

SECOND REASON TO ALLOW THE WRIT

The second reason to grant the writ is to resolve the conflict that exists among the states as to whether the STATE economic propaganda practices challenged herein violate the Fourteenth Amendment. Of the four cases stated above, the unpublished decision of the United States Court of Appeals of the Sixth Circuit (*Wallace, supra.*) addressed only the issue of whether the Channel One practices violated Wallace's rights of religious freedom guaranteed by the First Amendment. The *Wallace* court rejected the religious freedom claim and

these petitioners have never made such a claim.

In *State v. Whittle Communications* 402 S.E. 2d 556 (N.C. 1991), an agency of state government of North Carolina challenged the Channel One practice as being beyond the authority of the agency implementing it under the North Carolina law. The North Carolina court rejected that claim but made no ruling on Fourteenth Amendment issues. (A strong dissenting opinion impugned Channel One as "neither instructional nor needed for educational purposes." 402 S.E. 2d @ 568). These petitioners have made no such a claim.

The third decision, *Dawson v. East Side Union High School*, 28 Cal. App. 4th 998, 34 Cal. Rptr. 2d 108 (Cal. 6th Dist. 1994), did involve an individual's Fourteenth Amendment challenge to the Channel One economic propaganda practices on the grounds Petitioners have asserted herein. Although *Dawson* found that the practice as actually implemented by the school in question

did not violate the Fourteenth Amendment, *Dawson*, nevertheless, directly conflicted with the decision below on the key constitutional point Petitioners seek to have reviewed by this Court. *Dawson*, contrary to the decision below, flatly held that under the Fourteenth Amendment, "public school students cannot be compelled to watch classroom video advertising." (Emphasis supplied). 34 Cal. Rptr 2d at 129. Contrary to STATE's practices in this case, the school board in *Dawson* had taken these affirmative steps to avoid unconstitutional state compulsion:

> 1. K-III's (i.e., Whittle's) school agreement with the school board explicitly permitted schools to allow students to "opt out" of the daily Channel One audience.
>
> 2. K-III (i.e, Whittle) and the East Side Union School District had in fact agreed that "the District would not require

students to watch Channel One but would instead make this an optional student activity."

3. Prior to commencing the program, the school board informed parents of the opt out option both by letter and at a "Back-to-School" meeting.

4. The school board provided opting out students an optional educational opportunity in a designated study area during the daily Channel One showing.

5. Students who did not opt out entirely could study or otherwise ignore Channel One while shown or attend school meetings.

Id. at 131. In this action, the facts are different in every important detail. K-III's agreement with STATE did not permit STATE to allow children to opt out, but required

STATE to produce all the children for the daily Channel One audience. STATE did not inform children and parents of any right to opt out. STATE did not provide an optional educational program in a designated study area or otherwise. STATE and K-III did not consider Channel One to be an optional student activity.

Petitioners respectfully submit that Dawson and this decision from Florida constitute conflict between courts of highly populous states on a constitutional matter of extreme importance to the personal liberties of millions of minor children and their parents and that this conflict is urgently deserving of resolution by this Court.

CONCLUSION

Because of the extreme gravity of the practice of STATE compelled exposure of the minds of minor school children to commercial economic propaganda as a means of raising funds for the STATE and of the need to resolve conflict, Petitioners respectfully pray this Court to issue

the writ.

Respectfully submitted,

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APPENDIX A

Opinion of the Court Below

COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

CASE NO. 97-745

RALPH HESS, DARNELL RHEA, ROBERT LONG and SHARON LONG, as parents and next friends of minor Daniel Long, DANIEL LONG, JOHNNY MENDOZA, SR. and MIRIAM MENDOZA, as parents and next friends of minor Johnny Mendoza, Jr., and JOHNNY MENDOZA, JR.,

Plaintiffs/Appellants,

v.

SCHOOL BOARD OF ALACHUA COUNTY, FLORIDA,

Defendant/Appellee, and

K-III COMMUNICATIONS CORPORATION,

Intervenor/Appellee.

December 17, 1997, Opinion Filed

PRIOR HISTORY: An appeal from the Circuit Court for Alachua County. Frederick D. Smith, Judge.

COUNSEL: Joseph W. Little, Gainesville, for Appellants.

Thomas L. Wittmer, Staff Counsel, Gainesville, for Appellee School Board of Alachua County.
John Radey and Elizabeth McArthur of Katz, Kutter, Haigler, Alderman, Bryant & Yon, P.A., Tallahassee, for Appellee K-III Communications Corporation.

OPINION:

PER CURIAM. AFFIRMED.

BOOTH, and VAN NORTWICK, JJ., and COSTELLO, ASSOCIATE JUDGE, CONCUR.

APPENDIX B

Order of Circuit Court Eighth Judicial Circuit of Florida

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT IN AND FOR ALACHUA COUNTY, FLORIDA

ROBERT LONG and SHARON LONG, et al.,

Plaintiffs,

vs. Case No.: 92-3214

SCHOOL BOARD OF ALACHUA COUNTY,

Defendant,

and

K-III COMMUNICATION CORPORATION,

Intervenor.

_____/

ORDER GRANTING MOTION OF SUMMARY JUDGMENT FOR BOARD AND K-III AND DENYING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

This action was heard on the Board's and K-III's

motion for summary judgment on October 28, 1996. After hearing argument of counsel and reviewing the affidavits in support of both motions the court finds that there is no material issue of fact and that summary judgment is proper.

Channel One programming has been challenged in North Carolina, Tennessee and California. In each case the plaintiffs raised issues of due process, privacy, liberty and free public schools and in each case the court found those arguments without merit. *Wallace v. Knox County Bd. of Ed.*, No. CIV 3-92-219, Order and Memorandum Opinion (E.D. Tenn., 8/6/92), *Dawson v, East Side Union High School District*, 34 Cal. Rptr. 2d 108, 121 (Cal. 6th Dist. 1994) and *State v. Whittle Communication*, 402 S.E. 2d 556 (N.C. 1991). Though these cases are not binding on the court, the analyses are thorough and the rationale convincing. A parent's rights to choose a child's path of

education does not encompass a fundamental constitutional right to dictate the curriculum at a public school. *Brown v. Hot, Sexy and Safer Productions*, Inc., 68 F.3d 525 (1st Cir. 1995), *cert denied*, 116 S.Ct. 1044 (1996). The court finds that there was no violation of fundamental constitutional right and that the court must apply a rational basis standard to the Board's actions. Though this court may not have reached the same decision on Channel One programming as the Board, the court recognizes that the school board is made up of elected officials who are given the authority to make these decisions. *See, Ferrara v. Hendry County School Board*, 362 So.2d 371 (Fla. 2d DCA 1978), *rev. denied*, 368 So.2d 1366 (Fla. 1979), *cert denied*, 444 S.S. 856, 100 S.Ct. 116, 62 L.Ed. 2nd 75 (1979). The court therefore finds that current events literacy is a valid educational objective and that the methods for achieving that objective are also

within the purview of the school board's discretion and do not violate any constitutional provision. The methods by which the Board reached this decision were not arbitrary and therefore will not be overturned by this Court.

It is therefore

ADJUDGED that the Motion for Summary Judgment for the Board for K-III is granted and the Motion for Partial Summary for Plaintiff is denied.

ORDERED on December 11, 1996.

Original Signed by
Frederick D. Smith
Circuit Judge

Supreme Court, U.S.
FILED
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No. 97-1477

In The

Supreme Court of the United States

October Term, 1997

ROBERT LONG and SHARON LONG, individually and as parents and next friends of minor Daniel Long, DANIEL LONG, JOHNNY MENDOZA, SR. and MIRIAM MENDOZA, individually and as parents and next friends of minor Johnny Mendoza, Jr., and JOHNNY MENDOZA, JR.,

Petitioners,

vs.

SCHOOL BOARD OF ALACHUA COUNTY, FLORIDA, and K-III COMMUNICATIONS CORPORATION,

Respondents.

On Petition For A Writ Of Certiorari To The District Court Of Appeal Of Florida, First District

RESPONDENTS' JOINT BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Respondents disagree with Petitioners' QUESTION PRESENTED FOR REVIEW. The basis for the *per curiam* affirmance by the Florida District Court of Appeal, First District, cannot be known. If this Court were to issue the writ, then the issues presented would include

- whether Petitioners had legal standing to pursue this action when all the petitioning students had graduated,
- whether this case became moot because in 1996 the school board terminated the news program that Petitioners challenge, and
- whether this action must be dismissed because Petitioners failed to exhaust administrative remedies under the Florida administrative procedures act.

If this Court reached a due process issue under the Fourteenth Amendment to the United States Constitution, that issue would be

- whether Respondents were entitled to summary judgment because the requirements of the Fourteenth Amendment were satisfied by a record demonstration of the school board's rational basis for a current events curriculum which includes daily classroom newscasts that include limited commercial content?

STATEMENT UNDER RULES 14.1(b) AND 29.6

Pursuant to Rules 14.1(b) and 29.6, the caption of this case does not name all parties to the proceeding in the court whose judgment is sought to be reviewed.

Ralph Hess and Darnell Rhea were listed as appellants in the Florida District Court of Appeal, First District, in addition to the six Petitioners listed in the caption of the Petition. Messrs. Hess and Rhea were dismissed for lack of standing at the circuit court level, but the decision below is reported as *Hess v. School Board of Alachua County*, 704 So.2d 523 (Fla. 1st DCA 1997).

In addition, during the course of the litigation below, K-III Communications Corporation changed its name to Primedia Inc., a publicly traded corporation. In other words, Respondent K-III Communications Corporation is now called Primedia Inc. Primedia Inc., formerly named K-III Communications Corporation, has no parent companies or nonwholly owned subsidiaries to be listed under Rule 29.6.

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STATEMENT OF THE CASE

A. PETITIONERS FAILED TO PROVIDE RELEVANT HISTORY OF THIS CASE.

Petitioners did not merely bring "an action under 42 U.S.C. § 1983 for declaratory and injunctive relief and damages." (Petition, p. 9)

In 1992, Petitioners sued the school board and Whittle, K-III's predecessor, *solely* for injunctive relief in an effort to stop the daily showing of a TV news and current events program, *Channel One*, in classrooms at some schools operated by the school board. Petitioners' Complaint was based *solely* upon their Florida constitutional right of privacy under Article I, Section 23, Florida Constitution. (R. I 1-12)

In 1993, the Circuit Court of the Eighth Judicial Circuit In and For Alachua County, Florida, granted Defendants' Joint Motion to Dismiss based on the court's conclusion that Petitioners' Florida constitutional rights of privacy were not violated by the school board decision to allow its schools to use the *Channel One* programming. (R. I 131-35) Petitioners were then allowed to file a Second Amended Complaint, and then a Third Amended Complaint. Petitioners' Third Amended Complaint was dismissed by the circuit court because of a "failure to allege exhaustion of administrative remedies and for failure to allege an exception to the APA [Chapter 120, Florida Statutes]." (R. III 460-66)

Petitioners then were given permission to file a Fourth Amended Complaint. Petitioners' Fourth Amended Complaint was the pending complaint when the circuit court granted summary judgment to Respondents as affirmed in the *per curiam* decision brought to this Court for review. The Fourth Amended Complaint was based primarily upon Petitioners' Florida constitutional rights (R. III 490-509), but Petitioners tacked on a

brief one-sentence prayer for relief under the federal constitution. (R. III 509) No other reference to any issue of federal law is found in the lengthy Fourth Amended Complaint.

Prior to entry of summary judgment in favor of Respondents and after several rounds of written discovery, depositions of Petitioners were taken and filed. Respondent school board submitted affidavits (R. VII 1160-1291, App. 1-40) from a school board chairman (App. 2-4), two school board superintendents (App. 5-12), five principals who saw students benefit from *Channel One* in their schools (App. 13-28), an assistant superintendent (App. 22-25), the school board's Director of Instructional Technology (App. 29-32), and two media specialists. (App. 33-40) These people observed *Channel One* firsthand and, as experienced educators, attested to its educational value. In sum, these school board affidavits show that *Channel One* was made available to combat current events illiteracy as part of a program to better educate students. Respondent K-III submitted an affidavit (R. VIII 1305-1314, App. 41-46) which attested to the wide acceptance of *Channel One* programming by educators throughout the United States.

Petitioners did not contest the good faith intentions of the school board, school administration, school principals or media specialists. Rather than contest any fact set forth in the school board or K-III affidavits, Petitioners only submitted affidavits that suggested that the *Channel One* programming did not provide educational value in some instances or in the opinion of Petitioners.[1]

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[1] Petitioners cite Roy F. Fox. (Petition, p. 12) Petitioners did not refer to, or provide an affidavit from, Mr. Fox in the circuit court. The first time Mr. Fox's name is found in the record below is in a similar cite in Petitioners' Reply Brief filed with the

Without evaluating the *Channel One* programming *de novo*, the Florida circuit court granted summary judgment in favor of Respondents for the reasons set out in the circuit court order appended to the Petition. (Petition, pp. 23-26) Basically the circuit court held, given the good faith of the school board and schools, that it was for the school board, not the court, to decide what current events programs would be used in the public schools.[2] Petitioners appealed to the State of Florida, First District Court of Appeal, which affirmed without opinion. *Hess v. School Board of Alachua County*, 704 So.2d 523 (Fla. 1st DCA 1997). (Petition, pp. 21-22)[3] Petitioners made no effort to request the Florida intermediate appellate court to certify any questions for review by the Supreme Court

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District Court of Appeal. When Respondents moved to strike that cite, Petitioners responded that the Fox cite was part of Petitioners' "Brandeis Brief" which the court could give as "little or as much weight as it thinks appropriate." Petitioners' cite to Fox is inappropriate and impertinent to the issues decided below and as such should be disregarded.

[2] Petitioners stated in a motion for rehearing filed with the circuit court on December 20, 1996, that the court's summary judgment had to be clarified to facilitate their appeal to "the highest appellate courts" (R. VII 1403); the circuit court's denial of their motion for rehearing and a rejection of their subsequent appeal by the Florida First District Court of Appeal without opinion has not caused Petitioners to rethink their announced ambition to make this case a cause *celebre* for themselves.

[3] The Honorable Joseph W. Little, counsel of record for Petitioners before this Court, was also counsel to Petitioners at the Florida circuit court and Florida district court of appeal levels. However, the Petition is the first document at any level identifying the University of Florida in reference to Mr. Little. The University of Florida has nothing to do with this case.

of Florida. *See* Fla.R.App.R. 9.030(a)(2)(v) and 9.330. Instead, Petitioners now ask this Court to review a *per curiam* affirmance by a Florida intermediate appellate court and to consider a defined issue which may not have been passed upon below, which was never expressly addressed by any Florida court, and which Florida's highest state court never had an opportunity to consider.

While the Fourth Amended Complaint was pending in the circuit court, two separate events effectively extinguished the controversy presented by Petitioners: first, the student Petitioners graduated from the Alachua County schools; second, the Respondent school board decided not to renew the *Channel One* contract in 1996. (R. VII 1189-1190) Equipment used for the *Channel One* programming was removed and the school board made other arrangements for current events education. (App. 10) Any injunctive relief that conceivably could have been granted to Petitioners became totally unnecessary and unwarranted. The school board and K-III argued to both the Florida circuit court and the district court of appeal that no Petitioner had standing to maintain the suit, that the suit was moot, and that the possibility of nominal damages and pursuit of an award of attorneys' fees did not provide an adequate present basis to keep the suit pending. The circuit court specifically found, as admitted by Petitioners, that "there is no ground for actual monetary damages and this Court will not consider any such claim." (R. VI 1130) However, the circuit court denied Respondents' motion to dismiss the case as moot because of the possibility of nominal damages. At the Florida District Court of Appeal, the mootness and standing issues were briefed and addressed during oral argument, but the district court affirmed *per curiam* without opinion.

B. PETITIONERS' VERSION OF THE FACTS IS INACCURATE.

Petitioners inaccurately imply that, because *Channel One* was not a part of a specific course or a specific graduation requirement, the school board made the decision to permit use of the *Channel One* programming for reasons other than the educational value of the *Channel One* programming. (Petition, pp. 1 and 8) Petitioners' implication cannot substitute for a foundation in the record. The record below shows unequivocally that the school board's use of *Channel One* programming was based upon the school board's good faith belief that students suffered from "current events illiteracy" and that the program would serve the educational goal of "bringing a common vocabulary of current events to students." (R. VII 1184-85)

In the Fourth Amended Complaint, Petitioners alleged that the *"Board's actions in permitting these curriculums is a curriculum decision."* (R. III 493, underlining in original) To emphasize this point, Petitioners underlined the word *"curriculum"* in fifty consecutive paragraphs of the Fourth Amended Complaint. (R. III 493-505)[4] Moreover, the school board explained its rational basis

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[4] When Petitioners' Third Amended Complaint was dismissed for failure to exhaust administrative remedies, Petitioners attempted to argue that *Channel One* was a part of the curriculum so that Petitioners could take advantage of an exemption for curriculum decisions from review under the Florida Administrative Procedures Act, Section 120.81, Florida Statutes (1997) [successor to Section 120.52(15)(c)5., Florida Statutes (1995)]. Therefore, the Fourth Amended Complaint has allegations underscored which were added to avoid the prior ruling of the circuit court that Petitioners failed to exhaust administrative remedies.

for use of the Educational Network, a part of which is *Channel One*, in eleven affidavits submitted to the circuit court to support the school board's motion for summary judgment. (R. VII 1160-1291; App. 2-40) While Petitioners may disagree with the school board and the schools that decided to take advantage of the *Channel One* programming, the good faith of the school board and schools in trying to combat what the school board referred to as "current events illiteracy" and to give students the best possible education has not and cannot be challenged. Beyond its determination that there was a rational basis for the school board and school decisions, the circuit court left to the school board and schools the determination of the educational value of the *Channel One* programming.

No record support exists for Petitioners' argument that the school board and schools used the Educational Network, including *Channel One*, as "a means of raising money" or as "a means of financing STATE's programs." (Petition, pp. 13-14) It is true that the school board and schools received equipment at no cost as a part of the *Channel One* programming. However, the insinuation by Petitioners that the school board and schools were primarily motivated to contract for *Channel One* programming in order to get free equipment has not one iota of support in the record. The record instead shows that the school board and the schools elected to use the programming for its educational value, not as a means to acquire teacher education materials and audio visual equipment. And in assessing the educational value of the programming, the school board and the schools understood that there would be limited commercial content in *Channel One*. However, the commercial content was found to be

"incidental" to the educational purpose of the program. (App. 5-40)

Petitioners also inaccurately describe how the *Channel One* programming was implemented. The school board entered into a written contract with K-III, called the District Agreement, which made the Educational Network, including *Channel One* programming, available to schools operated by the school board. Some schools (with the concurrence at the school level of the principal, faculty, media specialist, and parents) chose to implement the program on the terms approved by the school board; other schools chose not to implement the programming.

The *Channel One* news programs were provided by daily satellite transmissions to the participating schools and ran "approximately twelve minutes and . . . include not more than two minutes of commercial content." (R. X 1642) Petitioners inaccurately tell the Court that "the commercials are seamlessly integrated" and that K-III "seamlessly integrates two minutes of commercial television advertisements." (Petition, pp. 1 and 6) While *Channel One* could not be shown without the commercial content, the written contracts strictly limited the types of commercials that could be shown and forbade "any creative technique that may confuse the viewer by blurring the distinction between programs and commercials." (R. X 1650-52) Moreover, the school board negotiated a special written contract provision that required the programming to meet the standards of the community as determined by the school board and the schools. (R. X 1641) The limited commercials were plainly separate and distinct from the news itself as shown in the videotapes that are a part of the record below.

Throughout the Petition, this Court is told that students were required by the school board or the schools to

view *Channel One*. The record simply does not support these assertions. Students were never compelled to watch or listen to *Channel One* programs. The two Petitioners who were formerly students in participating schools testified in deposition that when they were in the classroom, they did not pay attention to *Channel One*. Former student-petitioner Johnny Mendoza, Jr. testified that when *Channel One* was shown, he and other students paid attention only sometimes.[5] (R. VI 1099-1100, Mendoza Jr. depo. p. 12) Former student-plaintiff Daniel Long testified in his deposition that even when he was in the classroom, he chose not to pay any attention to *Channel One* programs:

> Q: How did you like Channel One?
>
> A: Really never watched it that much. I worked pretty much all the way through it. The first year, I think was my ninth grade year, they had me – I went and sat in the office in the mornings, so I didn't watch it. . . . My parents. They requested that I was to move into the office so I didn't have to watch it. And last year and this year I'm in drafting, so I work all the way through the Channel One. *I don't really watch it at all.*"

(R. VI 1047, D. Long depo. p. 3, emphasis supplied) Other students exercised the same freedom of choice. (R. VI 1054, D. Long depo. pp. 9-10)[6]

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[5] Student Mendoza thought that the current events portion was a waste of time because it was similar to news he got from other sources; he chose not to pay attention to the commercials. (R. VI 1097, 1105, Mendoza, Jr. depo., pp. 9, 17)

[6] Student-plaintiffs Long and Mendoza may have been bored, finding *Channel One* redundant with other commercial

The school board did *not* have a policy or practice of compelling any student to be present while *Channel One* was shown if the student or the student's parents objected. Under the policy and practice of the school board and the participating schools, *no* student who voiced an objection, or whose parents voiced an objection, was ever forced to be present while *Channel One* was shown. Principals Jones, Islar, Stechmiller, and Boyd state in their affidavits that at their schools, no student or parent *ever* requested that a student be excused while *Channel One* was shown. (R. VII 1223, Jones aff. p. 2 [App. 14]; R. VII 1241, Islar aff. p. 2 [App. 17]; R. VII 1259, Stechmiller aff. p. 2 [App. 20]; R. VII 1263, Boyd aff. p. 3 [App. 23]) Dr. Nelson reported that only one parent ever approached him to ask that a student be excused: plaintiff Robert Long. Mr. Long's request was honored and plaintiff student Daniel Long was "excused from the classroom when *Channel One* was shown as requested by Mr. Long." (R. VII 1268, Nelson aff. p. 3 [App. 27]) In the Petition, the Court is told that student Long's departure from the

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and news media, as suggested by paragraph 44 of their Fourth Amended Complaint:

> The content of the editorial segment of the Whittle TV programs *as part of board's curriculum* is readily available to all or virtually all students in the public media, including commercial and public TV and radio, newspapers, new magazines and similar outlets.

(R. III 499; emphasis in original) Although these two students may have otherwise sought out other sources of current events, nothing in the record controverts the school board's judgment that considering the district *as a whole*, there was a problem with current events illiteracy that needed to be addressed and *Channel One* helped address the problem in the collective, good faith judgment of the school board.

classroom as his parents requested "embarrassed and humiliated" him such that his parents allowed him to be present when *Channel One* was shown to help his "emotional well being." (Petition, p. 9) The cause of student Long's embarrassment was the narrow and extreme views of his parents, who were the only parents that requested their son or daughter to be excused. No embarrassment was caused by the school board.

The board policy was to accommodate parents and students. The record unequivocally shows that *every* parent who asked for an opt-out had the request honored.[7] Superintendent Hughes put it this way:

> As to *Channel One*, for example, principals would be encouraged to allow students to be excused from the classroom when that program was shown where strong parental objections were made known. To my knowledge, only one parent asked that a student be excused from watching *Channel One* and that student was excused.

(R. VII 1205, Hughes aff. p. 4; App. 11) Petitioners never disputed this policy and only argued that it was not reduced to a written form. In addition, the record shows that media specialists, principals, and students made presentations to the school board in public meetings where *Channel One* programming was praised for its great value. For example, the Board's Director of Instructional Technology made a presentation at a public school board meeting where he stated that he "personally observed

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[7] The Mendozas never objected or asked that Johnny Jr. be excused while *Channel One* was shown. Instead, the student was *solicited* to join this lawsuit by his *teacher*, original plaintiff Rhea (who was dismissed for lack of standing by the trial court), and Johnny Jr. then solicited his parents' support. (R. VI 1095-96, Mendoza Jr. depo. pp. 7-8)

students benefit from *Channel One* programs in the board's schools" and that, based upon his own review of the program materials, the program was "consistently of high quality and educationally beneficial." (R. VII 1189, 1270-71; App. 30-31) The school board obviously did not satisfy each and every parent or student (as if that were possible), but the school board certainly did not compel any student to watch *Channel One*.

REASONS WHY A WRIT OF CERTIORARI SHOULD NOT BE GRANTED

As discussed above, Petitioners' Fourteenth Amendment arguments were an afterthought below. In this case, it is impossible to say whether and how any federal issue was passed upon, even if one examines the unpublished Florida circuit court order. (Petition, pp. 23-26) Contrary to Rule 14.1(g)(i), the Petition fails to refer to parts of the record where the courts below specifically addressed the Fourteenth Amendment. For this reason alone, the writ should not be granted.

Petitioners offer two theories to allow the writ, but neither theory has merit. First, Petitioners assert that a state court has decided an important question of federal law in a manner that conflicts with relevant decisions of this Court (Petition, pp. 11-14) as suggested by this Court's Rule 10(c). As discussed below in subsection A, the decision below does not pass upon an important question of federal law and does not conflict with any decision of this Court. Second, as a fall-back, Petitioners assert that a Florida court of last resort decided an important federal question in a manner that conflicts with a California court of last resort (Petition, pp. 14-18) as suggested by this Court's Rule 10(b). As shown below in subsection B, however, no "last resort" decisions exist in

either state and no conflict exists between the decision below and the California decision cited by Petitioners. The *per curiam* decision addresses no federal issue. *Hess v. School Board of Alachua County*, 704 So.2d 523 (Fla. 1st DCA 1997). (Petition, pp. 21-22)

A. NO IMPORTANT QUESTION OF FEDERAL LAW WAS DECIDED BELOW AND NO CONFLICT EXISTS WITH DECISIONS OF THIS COURT.

1. THE DECISIVE REASON FOR THE *PER CURIAM* AFFIRMANCE CANNOT BE DETERMINED.

Petitioners assert that this Court should exercise its discretion to issue the writ because a Florida court has allowed the school board and some of its schools to use *Channel One* contrary to the Fourteenth Amendment in violation of "the ambit of liberties acknowledged in prior decisions of this Court." (Petition, p. 13) It appears that Petitioners generally assert that the decision below conflicts with relevant decisions of this Court on an important question of federal law within the meaning of Rule 10(c).

The first point is that the Florida First District Court of Appeal provided no indication of the reason why it chose to affirm the circuit court order granting summary judgment for Respondents. Therefore, it is impossible to say that the decision brought to this Court for review addresses any question of federal law or on its face conflicts with any prior decision of this Court. The decision is a total nullity to anyone seeking to apply the prior decisions of this Court.

The second point is that, even if this Court goes behind the *per curiam* decision below to speculate as to the underlying rationale of the Florida First District

Court of Appeal, the underlying rationale cannot be determined. Alternative grounds, other than a determination under the Fourteenth Amendment, were presented to the court below.

One alternative rationale for an affirmance presented and argued to the court below was mootness. After one of the original plaintiffs was elected to the school board, the school board decided to use alternative means of current affairs education and ended the contract that allowed use of *Channel One* programming. The decision to terminate the District Agreement has now been fully implemented. There is no present prospect for the school board to reconsider use of K-III programming, and it would be speculative to predict the terms of any future contract that might arise between the school board and K-III. (R. VII 1200-01; App. 10)

Nothing was left to enjoin and therefore Petitioners could not establish any basis for injunctive relief. As to damages, the circuit court entered an order stating that "there is no ground for actual monetary damages and this Court will not consider any such claim" (R. VI 1130) and Petitioners claim only nominal damages. Potential nominal damages are not enough to avoid dismissal of this case as moot under § 1983[8] or state law.[9]

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[8] An asserted damages claim will keep the case alive *only* where the plaintiffs establish that they suffered actual monetary loss, and that their damages claim is "substantial". *See, e.g., Board of Pardons v. Allen*, 482 U.S. 369, 370, n.1, 107 S.Ct. 2415, 2417, n.1, 96 L.Ed.2d 303 (1987); and *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 8-9, 98 S.Ct. 1554, 1560, 56 L.Ed.2d 30 (1978) (where claims for injunctive and declaratory relief have become moot, a claim for compensatory damages would not be moot where "the validity of respondents' claim for damages *is not so insubstantial* or so clearly foreclosed by prior decisions

Where students challenge school board decisions, graduation of the students ends the basis by which the students or parents have any right to maintain a challenge to a school board decision. *Adler v. Duval County School Board*, 112 F.3d 1475 (11th Cir. 1997). In *Adler*, students challenged school board action allegedly allowing prayer in public schools, but during the appeal from summary judgment for defendants, the students graduated. The court held that "any claim for equitable relief has been rendered moot by the appellants' graduations." 112 F.3d at 1478. In this case, there is no possibility that these Petitioners will be subject to the issues complained of again, given that the student-petitioners have graduated. If the issues arise again for others, there would be

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that this case may not proceed.") (emphasis added); *Flagg Brothers v. Brooks*, 436 U.S. 149, 155, 98 S.Ct. 1729, 1732, 56 L.Ed.2d 186 (1978) (although injunctive relief no longer available, the court must reach merits of claim "*if* either respondent can demonstrate that she has suffered *monetary damage* by reason of the workings of [the challenged law]") (emphasis added); *Henschen v. City of Houston*, 959 F.2d 584, 588 (5th Cir. 1992) (where injunction claim moot, only claims for *actual* damages under § 1983 remain alive, where action complained of caused *actual* harm that can be compensated, as opposed to claim for intangible value of a constitutional right).

[9] Mootness was defined by the Florida Supreme Court in *Godwin v. State*, 593 So.2d 211, 212 (Fla. 1992), as follows:

> An issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect. A case is "moot" when it presents no actual controversy or when issues have ceased to exist. A moot case will generally be dismissed.

See, also, Jacksonville Television, Inc. v. Shorstein, 608 So.2d 592 (Fla. 1st DCA 1992).

no temporal urgency that would preclude meaningful judicial review. As such, exceptions to mootness are not applicable. *Adler, supra,* 112 F.3d at 1478 (significant issue of school prayer in graduation ceremonies would not be reached based on mootness, where issue would never again arise for those plaintiffs).

As a result, this case was moot as argued in Respondents' Joint Answer Brief filed with the Florida First District Court of Appeal and as discussed during oral argument before that court. Therefore, the Florida First District Court of Appeal may have affirmed because it believed the case was moot.

A second alternative rationale for the decision below may be articulated in terms of the lack of standing for Petitioners. The court below ruled that plaintiff Hess, as a citizen and taxpayer, and plaintiff Rhea, as a teacher, lacked standing to sue the school board, dismissing them as plaintiffs by order of June 6, 1995 (R. V 843-44), a ruling not appealed by Petitioners. The remaining Petitioners sued either as students, or parents of students, at schools using the K-III programming. The students graduated prior to the appeal to the Florida District Court of Appeal, leaving no Petitioner with a legally cognizable interest in school board curriculum matters. (Init.Brf. 4; R. VI 1044-1055; 1088-1111)

Perhaps the Florida First District Court of Appeal affirmed because the court believed that Petitioners lacked standing, but again there is no way of identifying the deciding issue for the court below. In any event, the decision of the Florida First District Court of Appeal in this case says nothing about any federal question because it says nothing other than "affirmed." Certiorari is unwarranted for that reason alone.

2. THE *PER CURIAM* AFFIRMANCE DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT.

If this Court chooses to assume that the use of *Channel One* was approved with the District Court of Appeal passing on the requirements of the Fourteenth Amendment, then no conflict exists between what may have been decided below by implication and this Court's prior decisions. Petitioners argue that the school board has

> violated the liberties of children and parents in childrearing, family and schooling decisions protected by the Fourteenth Amendment within the ambit of liberties acknowledged in prior decisions of this Court, including: *Parham v. J.R.* (1979) U.S. 584, 600, 99 S.Ct. 2493, 2503, 61 L.Ed.2d 101; *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15; *Meyer v. Nebraska* (1923) 262 U.S. 390, 402, 43 S.Ct. 625, 628 67 L.Ed. 1042; *Pierce v. Society of Sisters* (1925) 268 U.S. 510, 534, 45 S.Ct. 571, 69 L.Ed. 1070, and *M.L.B. v. S.L.J.* ___ U.S. ___ (1996), 117 S.Ct. 555, 136 L.Ed.2d 473 (sic).

(Petition, pp. 12-13) Each of the five decisions of this Court cited by Petitioners are discussed below. However, before looking at the facts and law described in each of those decisions, it is helpful to look at the bigger picture of how the Fourteenth Amendment has been applied in the context of schools.

"Courts are not school boards or legislatures." *Wisconsin v. Yoder, supra*, 406 U.S. 205, 235. This Court has therefore given considerable deference to decisions made by school boards. Yet, the school board and K-III both recognize that the power of school boards is not limitless and that constitutional limitations do apply. Where school

board actions "*directly* and *sharply* implicate basic constitutional values," then a strict scrutiny standard is applicable to test whether the alternative chosen by a school board is the alternative that causes the least infringement of rights. *Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S.Ct. 266, 270, 21 L.Ed.2d 228 (1968). Where no fundamental constitutional rights are at stake, then this Court refuses to become involved unless there is a demonstration that a school board acted in a totally arbitrary manner.

A recent case examining when basic constitutional values are at stake in school board decisionmaking is *Brown v. Hot, Sexy and Safer Productions, Inc.*, 68 F.3d 525 (1st Cir. 1995) *cert. denied*, 516 U.S. 1159, 116 S.Ct. 1044, 134 L.Ed.2d 191 (1996). In that case, students were compelled to attend an assembly to witness an allegedly "indecent" AIDS and sex education program conducted by Hot, Sexy and Safer Productions. Students and parents sued under 42 U.S.C. § 1983, alleging violations of their substantive and procedural due process rights. The district court dismissed the complaint for failure to state a cause of action. The Court of Appeals affirmed. While recognizing that government cannot foreclose parents' right to choose a path of education, such as by choosing home-schooling or private school rather than public school, the court distinguished the fundamental parental/familial rights recognized in cases such as *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), and *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), as follows:

> We do not think, however, that this freedom encompasses a fundamental constitutional right to dictate the curriculum at the public school to which they have chosen to send their children. We think it is fundamentally different for the state to say to a parent, "You can't teach your

> child German or send him to a parochial school," [as in *Pierce* and *Meyer*] than for the parent to say to the state, "You can't teach my child subjects that are morally offensive to me." The first instance involves the state proscribing parents from educating their children, while the second involves parents prescribing what the state shall teach their children. *If all parents had a fundamental constitutional right to dictate individually what the schools teach their children, the schools would be forced to cater a curriculum for each student whose parents had genuine moral disagreements with the school's choice of subject matter.* We cannot see that the Constitution imposes such a burden on state educational systems, and accordingly *find that the rights of parents . . . do not encompass a broad-based right to restrict the flow of information in the public schools.*

68 F.3d at 533-34 (citations omitted, emphasis supplied). A similar result was reached in *Herndon by Herndon v. Chapel Hill-Carrboro City Board of Education*, 89 F.3d 174 (4th Cir. 1996), *cert. den. sub. nom. Reinhard v. Chapel Hill-Carrboro City Board of Education*, ___ U.S. ___, 117 S.Ct. 949, 136 L.Ed.2d 837 (1997), where parents and students challenged on due process and privacy grounds a school board requirement that students perform 50 hours of unpaid community service as a condition of graduation. The community service had to be performed after normal school hours and there was no opt-out provision for objecting students. The district court granted summary judgment for defendants and *Herndon by Herndon* affirmed.

In rejecting the argument that the parents' fundamental constitutional right to direct the education of their children was implicated, the court distinguished *Meyer v. Nebraska, supra, Pierce v. Society of Sisters, supra,* and held as follows:

> From *Meyer* to *Runyan*, the Supreme Court has stated consistently that parents have a liberty interest, protected by the Fourteenth Amendment, in directing their children's schooling. Except when the parents' interest includes a religious element, however, the Court has declared with equal consistency that *reasonable* regulation by the state is permissible even if it conflicts with that interest. That is the language of rational basis scrutiny.

89 F.3d at 179. *See also Immediato v. Rye Neck School District*, 73 F.3d 454, 461 (2d Cir. 1996); *cert. denied*, ___ U.S. ___, 117 S.Ct. 60, 136 L.Ed.2d 22 (1996).

The court in *Ouimette v. Babbie*, 405 F.Supp. 525 (D.Vt. 1975), dismissed a constitutional challenge to a student's suspension for refusing to attend a required physical education class. Plaintiffs in that case sought to debate the educational value of the school board's curriculum decision, but the court held that deference to the school board's judgment was required:

> While there is a legitimate entitlement to a public education provided by the State, free from impairment of protected liberties, there is no right under the paramount law to receive a public education on special terms and conditions designated by the student.

405 F.Supp. at 530.[10]

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[10] Likewise, in *Sherman v. Community Consolidated School District 21*, 980 F.2d 437 (7th Cir. 1992), *cert. denied*, 508 U.S. 950, 113 S.Ct. 2439, 124 L.Ed.2d 658 (1993), the court confirmed the government's right to regulate public schools, as well as the right to insist that "those who cannot accept the result exercise their right and select private education at their own expense." *Id.* at 444-45 (citations omitted). School boards may set curricula bounded only by the Establishment Clause, "even though pupils may find the books and classroom discourse offensive or immoral." *Id.* at 445.

These cases recognize that parents and students, like Petitioners, plainly have a right to oppose use of *Channel One* programming before the school board in a public meeting. But if Petitioners choose to use the public schools, they must accept curriculum decisions of the school board elected to make those decisions, so long as the decisions are not wholly arbitrary. Courts have never recognized any fundamental constitutional rights on the part of parents or students that would trigger strict scrutiny of school board curriculum decisions that are challenged on strictly secular grounds. And Petitioners in this case admittedly only challenge *Channel One* on secular grounds. (Petition, pp. 14-15)

The applicable test in this case then is whether the school board was arbitrary in authorizing its schools to use *Channel One*.[11] It is clear that the school board was acting within its authority under Florida law because the Florida Constitution gives school boards the power "to operate, control and supervise" the public schools. Article IX, § 4, Fla. Const. Moreover, the record below clearly established the school board's good faith determination that *Channel One* did serve to combat "current events illiteracy" where schools opted to use the programming. (App. 1-46) Petitioners believed differently than the school board, but such disagreement is no indication that the school board's decision was arbitrary. The Florida circuit court found that the record contained a rational basis for the school board to use *Channel One* at some schools, a decision that the District Court of Appeal chose

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[11] Petitioners concede that they have no objection from a procedural standpoint. The school board acted in noticed public meetings where Petitioners spoke in opposition to *Channel One*.

not to expressly address. Now the Petitioners seek to have this Court find error in that factual finding, a reason that "rarely" supports issuance of a writ under Rule 10.

Turning to the five cases of this Court cited as being in conflict with the decision below, the first cited decision is *Parham v. J.R.*, 442 U.S. 584, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979). In *Parham*, the Court was faced with balancing the rights of a child not to be confined in a mental hospital and broad parental authority over minor children in the context of a Georgia statute that allowed parents to commit their children to mental hospitals. On the one hand, the children have a fundamental liberty interest "in not being confined unnecessarily for medical treatment." 99 S.Ct. 2493, 2503. On the other hand,

> Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is 'the mere creature of the State' and, on the contrary, asserted that parents generally 'have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations.' *Pierce v. Society of Sisters*, 268 U.S. 510, 535, 45 S.Ct. 571, 573, 69 L.Ed. 1070 (1925). *See also Wisconsin v. Yoder*, 406 U.S. 205, 213, 92 S.Ct. 1526, 1532, 32 L.Ed.2d 15 (1972); *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S.Ct. 438, 442, 88 L.Ed. 645 (1944); *Meyer v. Nebraska*, 262 U.S. 390, 400, 43 S.Ct. 625, 627, 67 L.Ed. 1042 (1923).

99 S.Ct. 2493, 2504. The Court held that the fundamental right of children not to be improperly confined required the State through a neutral factfinder to determine whether a child was to be voluntarily confined for a mental illness. Unlike the facts in *Parham*, Petitioners do

not have fundamental constitutional rights to determine the public school curriculum that suits them personally. The school board, not Petitioners, determines the public school curriculum.

Petitioners cite three of the cases cited by the Court in *Parham*: *Pierce*, *Yoder*, and *Meyer*. In *Pierce*, the Court was faced with an Oregon statute that compelled general attendance at public schools and the Court held that the Oregon statute unconstitutionally interfered with the liberty interests of parents and students as to the education of the students. Petitioners in this case clearly had the choice of whether to home school, attend a private school, or attend public school. Just because Petitioners chose to use the public schools does not give Petitioners a right to control the curriculum that the school board and schools chose to implement.

In *Yoder*, this Court recognized that Wisconsin could not compel Amish students to attend a formal school after they had graduated from eighth grade. The Court, in view of a freedom of religion claim and record showing that the Amish had demonstrated an ability to informally educate their minor students, found that Wisconsin could not compel Amish students to attend a formal school until age sixteen. In the present case, Petitioners have not asserted any religious claim and base their Petition entirely upon secular grounds involving Petitioners' view that *Channel One* should not be a part of the school board's curriculum.

In *Meyer*, Nebraska law provided that no teacher could teach in any language other than English until after the eighth grade. Robert Meyer was a teacher who was convicted of a criminal offense because he taught a pupil using the German language. This Court held the statute unconstitutional because it was "arbitrary and without

reasonable relation to any end within the competency of the state." 43 S.Ct. 625, 628. Unlike *Meyer*, "Petitioners readily concede that [school board] possesses wide discretion in prescribing curriculums." (Petition, p. 12) The school board was plainly acting within the ambit of its authority. In addition, unlike *Meyer*, the school board did not place any compulsion upon any student. The only student who asked to be excused was excused. The students who remained in the room were not forced to listen to the *Channel One* program. Those students who listened heard a news program like other news programs with limited commercial advertisements deemed incidental to the educational purpose. There was absolutely no compulsion placed upon students to adopt the views of news reporters or to buy products described in the limited advertisements.

The last case cited by Petitioners was *M.L.B. v. S.L.J.*, 519 U.S. 102, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996). In *M.L.B.*, this Court granted a petition for writ of certiorari where a mother's parental rights were terminated by the State of Mississippi. The Court determined that Mississippi could not terminate an indigent parent's right to raise her children where the parent did not have sufficient money to pay for a transcript and filing fees. Where parental rights are being permanently terminated as in *M.L.B.*, or a child is confined in a mental hospital as in *Parham*, the permanence and fundamental nature of a state's intrusion into the liberty interests of a parent and child, outside the context of the public schools, is manifest and far different than the curriculum decision involved in this case.

In the context of public education, when a state tries to take away private schools as an option (*Pierce*), or

impinges upon an established sect's right to school informally after eighth grade graduation (*Yoder*), or provides that English is the only lawful instructional language (*Meyer*), this Court has provided close scrutiny of the reasons that support the supposed public purpose. However, this Court has never made general curriculum decisions for school boards. Courts do not decide curriculum matters *de novo*, but rather give considerable deference to elected school boards.

The record in this case shows that the school board acted in good faith and with the support of trained educators to combat current affairs illiteracy by allowing schools to use *Channel One* programming. (App. 1-46) A few parents and teachers disagreed and sued the school board in an attempt to have a court give Petitioners a second chance to present the arguments rejected by the school board. However, the school board's decisions were not actions that "*directly* and *sharply* implicate basic constitutional values." *Epperson v. Arkansas, supra*. The record shows a rational basis for the school board in the form of affidavits attesting to the substantial educational value of the programming and incidental nature of the commercials; due process does not require this Court or any court, to consider alternative means of current events education and decide how students will be educated in Alachua County, Florida. Even if the Florida First District Court of Appeal had made its decision based upon its interpretation of the requirements of the Fourteenth Amendment, that decision is fully consistent with the prior decisions of this Court.

B. NO CONFLICT EXISTS BETWEEN FLORIDA AND CALIFORNIA COURTS AND NO COMPELLING REASON EXISTS TO GRANT THE WRIT OF CERTIORARI.

Next, Petitioners seek to convince this Court that the decision below creates a conflict, not with decisions of this Court, but rather as a decision of a Florida court of last resort with a decision of a California court of last resort. However, as discussed here, the purpose and intent of Rule 10(b) would not be served by issuance of a writ under the circumstances presented in this case.

1. NO CONFLICT EXISTS BECAUSE THE FLORIDA FIRST DISTRICT COURT OF APPEAL MERELY AFFIRMED *PER CURIAM*.

No conflict exists under Rule 10(b) unless that conflict is manifest upon a reading of the two state decisions. The *per curiam* decision of the Florida District Court of Appeal has no precedential value and does not conflict on its face with any other decision of any other court because it does not say anything other than "affirmed." *Department of Legal Affairs v. District Court of Appeal*, 434 So.2d 310, 312 (Fla. 1983) ("The rationale and basis for a [per curiam] decision without opinion is always subject to speculation"). Even if one were to look beyond the decision of the Florida District Court of Appeal to the unpublished decision of the circuit court, no reference is made by the circuit court to the requirements of the Fourteenth Amendment to the Constitution of the United States. No federal issue appears.

When, as here, the alleged highest state court is silent on the federal question presented for certiorari, this Court in the past has presumed that the federal issue was not properly presented below unless and until the party

seeking certiorari carries the burden of demonstrating the presumption to be inapplicable. *Adams v. Robertson*, 65 U.S.L.W. 4180, 117 S.Ct. 1028, 1029, 137 L.Ed.2d 203 (1997). In this case, Petitioners have neither addressed this presumption in their Petition nor have they established that the federal issue they define in the Petition was "pressed or passed upon" below. *Illinois v. Gates*, 462 U.S. 213, 217-219, 103 S.Ct. 2317, 2321-2322, 76 L.Ed.2d 527 (1983). This requirement is critical to the Court's jurisdiction under 28 U.S.C. § 1257 and its determination of whether to grant certiorari. *See, e.g., Adams, supra; Webb v. Webb*, 451 U.S. 493, 101 S.Ct. 1889, 68 L.Ed.2d 392 (1981). Given the fact that the First District Court of Appeal's decision below may have been premised upon any number of theories, a federal issue has not been clearly "passed upon" below and this Court has no clear reason to grant certiorari. *Webb, supra.*

Even ignoring the absence of a clear federal issue decided below, the instant Petition still fails to meet other important criteria in Rule 10(b). Principally, this Court should note that the decision of the Florida First District Court of Appeal is not necessarily a decision by the Florida court of last resort. In this case, Petitioners could have requested that the First District Court of Appeal certify their constitutional concerns as questions of great public importance for review by the Supreme Court of Florida. *See* Fla.R.App.P. 9.330. Petitioners failed to request this relief below and thus failed to exhaust the possibility of discretionary review by the highest Florida state court. It comes as no surprise that this Court has stringently enforced the requirement that petitioners under 28 U.S.C. § 1257 exhaust all possible avenues of state court relief. *See Sandquist v. California*, 419 U.S. 1066, 95 S.Ct. 651, 42 L.Ed.2d 662 (1974); *Banks v. California*, 395

U.S. 708, 89 S.Ct. 1901, 23 L.Ed.2d 653 (1969); *Gotthilf v. Sills*, 375 U.S. 79, 84 S.Ct. 187, 11 L.Ed.2d 159 (1963) (finding that petitioners' failure to seek appeal of nonfinal order by leave of the New York Appellate Division upon certified questions voided jurisdiction under § 1257). Petitioners, of course, did not have an absolute right to review in the Supreme Court of Florida, but the Supreme Court of Florida has reviewed under its discretionary review powers a *per curiam* decision of a District Court of Appeal. *Radiation Technology, Inc. v. Ware Constr. Co.*, 445 So.2d 329 (Fla. 1983). Petitioners' failure to seek possible appellate relief in Florida emphasizes that the district court of appeal did not decide any question of great public importance and disqualifies the instant Petition from consideration under 28 U.S.C. § 1257. *Gotthilf, supra.*

Moreover, the decision upon which Petitioners rely to show a conflict, *Dawson v. East Side Union High School*, 28 Cal. App. 4th 998, 34 Cal. Rptr. 2d 108 (Cal. 6th Dist. 1994), is not a decision of the California court of last resort as required by Rule 10(b). The *Dawson* case was a decision by a California intermediate appellate court and was never considered by the California Supreme Court. Although the *Dawson* litigants could have petitioned the California Supreme Court to review their appellate decision, *see* Cal. Rules of Ct. 28(a) and (b), they failed to do so. *Dawson* is thus a decision of an intermediate appellate body in California, and not a decision of the highest California state court.

Against this backdrop, it becomes clear that Petitioners have failed to meet even the most fundamental jurisdictional or prudential considerations outlined in Supreme Court Rule 10. Simply put, there is no decision which clearly decides any federal issue. Even worse,

there is no decision from any state's "highest court" on the issue now urged in certiorari. Here, certiorari, given this Court's past decisions, must be denied.

2. THE CALIFORNIA *DAWSON* DECISION DOES NOT CONFLICT WITH THE FLORIDA DECISION.

In *Dawson*, the appellate court agreed with federal public school cases recognizing that courts should not substitute their judgment for that of the school boards. The basic principle cited by the California court was that

> courts should give substantial deference to the decisions of local school districts and boards within the scope of their broad discretion, and should intervene only in clear cases of abuse of discretion. . . . [T]he essentially factual question whether particular noncurricular matters [i.e., commercials] are or are not incidental [to a primary educational purpose] must be addressed in the first instance to the broad discretion of local school districts and boards, and a court would be justified in disturbing the local decision only upon a clear showing of abuse of the local district's or board's sound discretion.

34 Cal.Rptr.2d at 117. The court in *Dawson* specifically rejected the notion that a school board could not lawfully contract to show the *Channel One* program in public schools and determine for itself whether commercials in *Channel One* were incidental to the educational benefits to be achieved by giving students the routine opportunity to be become better informed citizens.

The court in *Dawson* approved of *Channel One* where no student was compelled to view *Channel One*. Here too, no Petitioner, or any student, ever was compelled to view,

believe, or be tested upon *Channel One*. Petitioners, however, state that the contract in *Dawson* "explicitly permitted schools to allow students to 'opt out' of the daily *Channel One* audience." (Petition, p. 16) On this point, Petitioners are mistaken. In *Dawson*, there was no executed contract at all and the opt-out was done by mutual consent. *See Dawson*, 34 Cal.Rptr.2d at 114. Just like in *Dawson*, Petitioner's were allowed to opt out without objection from the school board or K-III. (R. VIII 1313, Peters aff. p. 9; App. 45)

Petitioners try to make much of the fact that parents in *Dawson* were informed in advance of their right to opt out. Here the record shows that Petitioners never asked the school board for any such notice; indeed, one Petitioner *did* ask for an opt-out which was immediately granted in a manner never complained of by any parent or student. Here nothing could be achieved by informing parents now of an opportunity to opt out of a program that is no longer being used. *Dawson* was decided on the basis primarily of California law and does not conflict with the present case. The few courts that have been faced with a challenge to *Channel One* have uniformly upheld school board decisions to make *Channel One* available to help educate students.

CONCLUSION

The decision that this Court is asked to review literally says only "affirmed". That *per curiam* decision may not have been based upon any federal question.

Even if the Court assumes that a federal question was implicitly decided below, there is no conflict with decisions of this Court or between state courts of last resort. No reason exists for this Court to apply its substantive resources to address a constitutional issue where no case

or controversy exists because the program in question was discontinued in 1996.

No fundamental constitutional rights are involved which require strict scrutiny of the school board's curriculum decision. The litigation below involved only a difference of opinion as to how to educate students in current affairs and the record supports the elected school board's decision to authorize its schools to use *Channel One* with the concurrence of school principals, faculties, media specialists, and parents. The Florida trial court did not err in granting summary judgment in favor of Respondents because the record shows that use of *Channel One* was not arbitrary. *Channel One* helped educate students. Respondents respectfully ask that the writ be denied.

Respectfully submitted,

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DATED: May 6, 1998

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IN THE CIRCUIT COURT OF THE
EIGHTH JUDICIAL CIRCUIT, IN AND
FOR ALACHUA COUNTY, FLORIDA

RALPH HESS, DARNELL RHEA, et al., Plaintiffs, vs. SCHOOL BOARD OF ALACHUA COUNTY, Defendant, and K-III COMMUNICATIONS CORPORATION, Intervenor.	CASE NO. 92-3214-CA DIVISION J

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AFFIDAVIT OF FRANK J. LAGOTIC

State of Florida

County of Alachua

Frank J. Lagotic ("Affiant"), being duly sworn, deposes and says:

1. Affiant was elected to the Alachua County School Board ("Board") in November 1982 and served continuously as an elected member of the Board from 1982 until 1994. Affiant served as chairman of the Board during several periods between 1982 and 1994.

2. Affiant at all times when serving as a member of the Board made a good faith, diligent, and earnest effort to make decisions that would serve the educational needs of students attending schools operated under the supervision of the Board.

3. As chairman of the Board, Affiant executed on behalf of the Board a District Agreement with Whittle Communications in May 1990, a copy of which is appended to this affidavit as **Exhibit 1** (14 pages, consisting of a one-page form contract with my signature, a two-page "Addendum" with my signature, and incorporated general terms with exhibits A-C).

4. The District Agreement, **Exhibit 1** to this affidavit, was approved at a duly-noticed, public Board meeting on April 3, 1990. An accurate copy of the approved minutes of that Board meeting is **Exhibit 2** attached and made a part of this affidavit.

5. The Board decision to enter the District Agreement as shown in **Exhibits 1 and 2** to this affidavit was made after considering a request from a middle school

principal made directly to the Board and after the positive recommendation made by Superintendent Magann and his staff.

6. I voted to approve the District Agreement as a member of the Board because of my informed judgment that the District Agreement enhanced and improved educational tools available at the school level, if the schools decided through the school administration, school faculty, and school advisory council to use the Whittle Educational Network described in the District Agreement. The individual schools made the decision to participate or not participate.

7. I voted to approve the District Agreement as a member of the Board solely based upon what I thought was best to allow the schools to better educate students attending schools under the general supervision of the Board. My vote to approve the District Agreement was honestly made in good faith without personal benefit to me after considering debate before the Board, the recommendations of staff, and after seeking out public comment.

8. I reached the personal judgment that the educational goals of the Board's schools would be served by the District Agreement, **Exhibit 1** to this affidavit, because it made available to the individual schools educationally-valuable resources.

9. The Board considered the renewal of the District Agreement at a duly-noticed, public Board meeting on March 16, 1993. An accurate copy of the approved minutes of that Board meeting is **Exhibit 3** to this affidavit.

10. I voted to renew the District Agreement as a member of the Board solely based upon what I thought was best to allow the schools to better educate students attending schools under the general supervision of the Board. My vote to renew the District Agreement was honestly made in good faith without personal benefit to me after considering debate before the Board including description of the experience under the District Agreement between 1990 and 1993, the recommendations of staff, and after seeking out public comment.

11. In 1993, I reached the personal judgment that the educational goals of the Board's schools would be served by renewal of the District Agreement, **Exhibit 1** to this affidavit, because it made available to the individual schools educationally-valuable resources.

Further affiant sayeth not.

/s/ Frank J. Lagotic
Frank J. Lagotic

Sworn to and subscribed before me this 15th day of August, 1996,

* * *

AFFIDAVIT OF SUPERINTENDENT D. P. MAGANN

State of South Carolina

County of Georgetown

D. P. Magann ("Affiant"), being duly sworn, deposes and says:

1. Affiant became superintendent of the Alachua County Schools in 1981 when he was hired by the School Board of Alachua County ("Board") and he served in that capacity continuously until 1991.

2. Affiant was a trained educator with experience as a teacher and a principal in excess of 15 years prior to becoming Board superintendent.

3. In his capacity as Board superintendent, Affiant supervised a large staff necessary to operate the Board schools and advised the Board as to decisions of the Board through briefing papers, analysis, and comments made at public meetings of the Board. In all of his activities as superintendent, Affiant always attempted to make decisions and recommendations based on what was best for the educational needs of students attending schools operated under the Board.

4. Affiant recommended to the Board approval of the District Agreement with Whittle Communications in 1990 when the Board approved that agreement.

5. Affiant's positive recommendation to the Board of the District Agreement with Whittle Communications in 1990 was made after diligent inquiry and was based upon what affiant thought would best serve the educational needs of the students attending schools operated

by the Board. Affiant's investigation of the District Agreement included viewing video tape showing the TV programming described in the District Agreement, discussions with district staff including those with special training in instructional technology, discussions with school staffs including principals, and analysis of what would best serve the educational needs of the students in Board schools.

6. During Board meetings, the public was allowed to raise and present issues of concern to the Board. After approval of the District Agreement in 1990, and while I remained Board superintendent into 1991, no member of the public presented to the Board questions or concerns regarding the District Agreement. In particular, the question of whether the Board needed to adopt a formal policy as to how individual students could be excused from the classroom when the Channel One programming described in the District Agreement was being shown was not even requested to be brought before the Board. If the Board had heard concerns from parents, principals, students, or others about the District Agreement, then I would have recommended to the Board that such concerns be carefully addressed.

7. As a general policy, Affiant urged principals in Board schools to attempt to accommodate individual parent and student preferences as to individual educational elements. As to Channel One, for example, principals would be encouraged to allow students to be excused from the classroom when that program was shown where parental objections were made known.

8. The Board and affiant allowed limited commercialism in the Board's schools when that commercialism appeared to serve the educational purposes of the schools. For example, school newspapers and yearbooks have commercial content; commercial restaurants and vending equipment are present in some schools; advertisements are allowed at athletic facilities; commercials also are present in the schools via the internet, via normal commercial TV programming, and via schools use of commercial newspapers as classroom aids. In each instance, just as in connection with the District Agreement, limited commercialism was allowed in the schools based upon a judgment that the educational programs of the schools would be thereby benefitted.

9. Affiant reached the conclusion that the limited commercials allowed as a part of Channel One under the District Agreement were incidental to the educational benefits received under the District Agreement.

Further affiant sayeth not.

/s/ D. P. Magann
D. P. Magann

Sworn to and subscribed before me this 13th day of August, 1996,

* * *

AFFIDAVIT OF SUPERINTENDENT ROBERT W. HUGHES

State of Florida

County of Alachua

Robert W. Hughes ("Affiant"), being duly sworn, deposes and says:

1. Affiant became superintendent of the Alachua County Schools in 199[2 /s/ RWH] when he was hired by the School Board of Alachua County ("Board") and he has served in that capacity continuously to the present.

2. Affiant's general educational and work experience is accurately shown in **Exhibit 1** to this affidavit.

3. In his capacity as Board superintendent, Affiant supervises a large staff necessary to operate the schools operated under the Board and advises the Board as to decisions of the Board through briefing papers, analysis, and comments made at public meetings of the Board. In all of his activities as superintendent, Affiant always attempts to make decisions and recommendations based on what is best for the educational needs of students attending schools operated under the Board.

4. Affiant recommended to the Board renewal of the District Agreement with Whittle Communications in 1993 when the Board decided to renew that agreement.

5. Affiant's positive recommendation to the Board of the District Agreement with Whittle Communications in 1993 was made after diligent inquiry and was based upon what affiant thought would best serve the educational needs of the students attending schools operated

by the Board. Affiant's investigation of the District Agreement included discussions with school level personnel who had views, positive and negative, with respect to the District Agreement and Channel One including principals, teachers, and media specialists, discussions with students and parents, discussions with district level staff including those with special expertise in instructional technology, firsthand assessment of how the District Agreement had been implemented between 1990 and 1993, and analysis that showed renewal of the District Agreement would be educationally beneficial to students attending the Board schools.

6. Affiant recommended to the Board approval of the continuation of the District Agreement with Whittle Communications for the Board meeting held on March 5, 1996, when the Board decided to discontinue that agreement. An accurate copy of the approved minutes of that Board meeting is **Exhibit 2** attached and made a part of this affidavit.

7. As shown in the minutes for the March 5, 1996, board meeting, positive citizen input regarding the District Agreement was received from a student government representative, a teacher, and a former student.

8. Affiant's positive recommendation to the Board of the District Agreement with Whittle Communications in 1996 was made after diligent inquiry into actual use of the District Agreement and all comments made with respect to the actual school use of Whittle's Educational Network as described in the District Agreement between 1991 and 1996. Affiant came to the conclusion that the

District Agreement served the educational needs of students attending schools operated by the Board and that the limited commercials in Channel One were incidental to educational benefits being realized by students as a result of the District Agreement and the school decision to use the District Agreement.

9. The Board decision to terminate the Whittle District Agreement has been implemented. All use of Whittle's Educational Network pursuant to the District Agreement in schools operated by the Board ceased as of June 1996. All equipment installed pursuant to the District Agreement has been removed and the Board has otherwise provided for TV programming in the classrooms where such equipment has been removed.

10. The Board has expressed no interest in reconsidering its decision to terminate the District Agreement and no staff analysis is underway which would precurse consideration by the Board of any contract like the District Agreement.

11. There is no reasonable prospect that the Board will even consider any contract like the District Agreement for the 1996-1997 school year and it would be highly speculative to try and predict what contract terms might be acceptable to the Board in the future as to any contract analogous to the District Agreement.

12. During Board meetings, the public is allowed to raise and present issues of concern to the Board. During the period 1991 through the present, no member of the public has presented to the Board the question of whether the Board needed to adopt a formal policy as to how individual students could be excused from the classroom

when the Channel One programming described in the District Agreement was being shown. If such a proposal were presented, it would have been my recommendation to attempt to reasonably accommodate parental concerns and the educational benefits that resulted from the District Agreement and the decisions by some schools to use the Whittle Educational Network including Channel One.

13. As a general policy, Affiant has urged principals in Board schools to attempt to accommodate strong individual parent and student preferences as to individual educational elements. As to Channel One, for example, principals would be encouraged to allow students to be excused from the classroom when that program was shown where strong parental objections were made known. To my knowledge, only one parent asked that a student be excused from watching Channel One and that student was excused.

14. The Board and affiant have allowed limited commercialism in the Board's schools when that commercialism appeared to serve the educational purposes of the schools. For example, school newspapers and yearbooks have commercial content; commercial restaurants and vending equipment are present in some schools; advertisements are allowed at athletic facilities; commercials also are present in the schools via the internet, via normal commercial TV programming, and via schools use of commercial newspapers as classroom aids. In each instance, just as in connection with the District Agreement, limited commercialism was allowed in the schools based upon a judgment that the educational programs of the schools would be thereby benefitted and the commercials were incidental to that educational benefit.

Further affiant sayeth not.

/s/ Robert W. Hughes
Robert W. Hughes

Sworn to and subscribed before me this 15th day of August, 1996,

* * *

AFFIDAVIT OF JEFFERSON W. JONES, JR.

State of Florida

County of Alachua

Jefferson W. Jones, Jr. ("Affiant"), being duly sworn, deposes and says:

1. Affiant was principal at Santa Fe High School during the 1989-1990 school year and remained principal at Santa Fe until 1992.

2. Prior to 1990, affiant was trained as a professional teacher and administrator and had experience as a teacher and administrator in excess of 20 years.

3. As principal of Santa Fe High School, affiant executed the Whittle Communications' School Agreement. An accurate copy of the School Agreement with affiant's signature is attached as **Exhibit 1** to this affidavit.

4. Affiant is aware of and participated in the decisionmaking process that led to the execution of the School Agreement attached as **Exhibit 1** to this affidavit. The Santa Fe High School faculty and SAC (school advisory council) supported the execution of the School Agreement with Whittle. Affiant in addition considered the positive recommendation of the school media specialist.

5. Prior to Affiant executing the School Agreement attached as **Exhibit 1** to this affidavit, Affiant concluded that Whittle's Educational Network as described in the School Agreement would educationally benefit the students at Santa Fe High School.

6. After execution of the School Agreement, affiant monitored use of the Whittle Educational Network at Santa Fe High School and continued to believe that the School Agreement served the educational needs of the students after personally monitoring how it was used as well as considering all comments from faculty, students, and parents.

7. As a result of the use of the Whittle Educational Network at Santa Fe High School, many students were better informed as to current events on an international and national level and thereby better able to participate as informed adult citizens and perform in related classes like social studies, history, and life management skills.

8. During the period when I was principal of Santa Fe High School no parent, student, or faculty member asked to be excused from any TV programming under the School Agreement.

9. The limited commercial content contained in programming under the School Agreement (specifically as a part of Channel One) was not significantly different than other commercial materials which students are exposed to everyday in schools. Such exposure comes from school newspapers, school yearbooks, the internet, classroom use of newspapers and normal commercial TV programming, advertisements by restaurants and vending machine companies, magazines used in the classroom, advertisements in athletic facilities like scoreboards, and other sources. In all of these instances, including the commercial segments of Channel One, exposure of students to commercial content is incidental to a program that serves the overall educational program of the school.

10. In summary, affiant believes that the Whittle Educational Network including Channel One was educationally beneficial to students at Santa Fe High School.

Further affiant sayeth not.

/s/ Jefferson W. Jones, Jr.
Jefferson W. Jones, Jr.

Sworn to and subscribed before me this 14 day of August, 1996,

* * *

AFFIDAVIT OF MAE V. ISLAR

State of Florida

County of Alachua

Mae V. Islar ("Affiant"), being duly sworn, deposes and says:

1. Affiant was employed by the School Board of Alachua County in 1989-90 as principal of F. W. Buchholz High School and remained principal at F. W. Buchholz until 1992.

2. Prior to 1990, affiant was trained as a professional teacher and administrator and had experience as a teacher and administrator in excess of 20 years.

3. As principal of F. W. Buchholz High School, affiant executed the Whittle Communications' School Agreement. An accurate copy of the School Agreement with affiant's signature is attached as **Exhibit 1** to this affidavit.

4. Affiant is aware of and participated in the decisionmaking process that led to the execution of the School Agreement attached as **Exhibit 1** to this affidavit. The F. W. Buchholz High School faculty and SAC (School Advisory Council) supported the execution of the School Agreement with Whittle. Affiant in addition considered the positive recommendation of media specialists.

5. Prior to Affiant executing the School Agreement attached as **Exhibit 1** to this affidavit, Affiant concluded that Whittle's Educational Network as described in the School Agreement would educationally benefit the students at F. W. Buchholz High School.

6. After execution of the School Agreement, affiant monitored use of the Whittle Educational Network at F. W. Buchholz High School and continued to believe that the School Agreement served the educational needs of the students after personally monitoring how it was used as well as considering all comments from faculty, students, and parents.

7. As a result of the use of the Whittle Educational Network at F. W. Buchholz High School, many students were better informed as to current events on an international and national level and thereby better able to participate as informed adult citizens and better able to perform in related classes like social studies, history, and life management skills.

8. During the period when I was principal of F. W. Buchholz High School no parent, student, or faculty member asked to be excused from any TV programming under the School Agreement.

9. The limited commercial content contained in programming under the School Agreement (specifically as a part of Channel One) was not significantly different than other commercial materials which students are exposed to everyday in schools. Such exposure comes from school newspapers, school yearbooks, the internet, classroom use of newspapers and normal commercial TV programming, advertisements by restaurants and vending machine companies, magazines used in the classroom, advertisements in athletic facilities like scoreboards, and other sources. In all of these instances, including the

commercial segments of Channel One, exposure of students to commercial content is incidental to a program that serves the overall educational program of the school.

10. In summary, affiant believes that the Whittle Educational Network including Channel One was educationally beneficial to students at F. W. Buchholz High School.

Further affiant sayeth not.

/s/ Mae V. Islar
Mae V. Islar

Sworn to and subscribed before me this 16 day of August, 1996

* * *

AFFIDAVIT OF TERRY E. STECHMILLER

State of GEORGIA

County of COBB

Terry E. Stechmiller ("Affiant"), being duly sworn, deposes and says:

1. Affiant has been employed by the School Board of Alachua County as principal of F. W. Buchholz High School since 1992 when affiant succeeded Mae V. Islar as principal.

2. Prior to 1992, affiant was trained as a professional teacher and administrator and had experience as a teacher and administrator in excess of 20 years.

3. As principal of F. W. Buchholz High School, affiant monitored implementation of the Whittle Communications' School Agreement.

4. Affiant is aware of and participated in the decisionmaking process that led to the continuation of the School Agreement at F. W. Buchholz High School until 1996. The F. W. Buchholz High School faculty, including media specialist, and SAC (School Advisory Council) supported continuation of the School Agreement with Whittle.

5. Through 1996, Affiant believed, and continues to believe, that Whittle's Educational Network as described in the School Agreement educationally benefitted the students at F. W. Buchholz High School. As a result of the use of the Whittle Educational Network at F. W. Buchholz High School, many students were better informed as to current events on an international and national level and

thereby better able to participate as informed adult citizens and better able to perform in related classes like social studies, history, and life management skills.

6. During the period when I was principal of F. W. Buchholz High School no parent, student, or faculty member asked to be excused from any TV programming under the School Agreement.

7. The limited commercial content contained in programming under the School Agreement (specifically as a part of Channel One) was not significantly different than other commercial materials which students are exposed to everyday in schools. Such exposure comes from school newspapers, school yearbooks, the internet, classroom use of newspapers and normal commercial TV programming, advertisements by restaurants and vending machine companies, magazines used in the classroom, advertisements in athletic facilities like scoreboards, and other sources. In all of these instances, including the commercial segments of Channel One, exposure of students to commercial content is incidental to a program that serves the overall educational program of the school.

8. The School Agreement ended at F. W. Buchholz High School as of May 1996 with the removal of equipment consistent with the Board decision to not renew the District Agreement. Affiant knows of no present plan to attempt to consider use of the Whittle Educational Network or Channel One at any time in the future.

9. In summary, affiant believes that the Whittle Educational Network including Channel One was educationally beneficial to students at F. W. Buchholz High School.

Further affiant sayeth not.

/s/ Terry E. Stechmiller
Affiant

Sworn to and subscribed before me this 15 day of August, 1996,

* * *

AFFIDAVIT OF WILLIAM D. ("DAN") BOYD, JR.

State of Florida

County of Alachua

William D. ("Dan") Boyd, Jr. ("Affiant"), being duly sworn, deposes and says:

1. Affiant is employed by the School Board of Alachua County as Assistant Superintendent for Instruction and in the past was principal of Gainesville High School.

2. Affiant is trained as a professional teacher and administrator and has had experience as a teacher and administrator in excess of 20 years.

3. As principal of Gainesville High School, affiant monitored implementation of the Whittle Communications' School Agreement including Channel One programs.

4. Affiant is aware of and participated in the decisionmaking process that led to the continuation of the School Agreement at Gainesville High School until 199[5 /s/ WDB].

5. As reflected in the Board minutes for the April 3, 1990, Board meeting, affiant appeared before the Board in support of the District Agreement with Whittle as principal of Gainesville High School. As I stated at that time, the Channel One programming was not replacing instructional time but instead was shown in noninstructional time that was and is built into the school schedule.

6. Between 1990 and 1996, Gainesville High School implemented the Whittle Educational Network via a standard School Agreement as authorized by the District

Agreement approved by the Board in 1990 and approved again in 1993.

7. As reflected in the Board minutes for the March 16, 1993, meeting, Gainesville High School conducted a survey with their School Advisory Council and student body – the results were unanimous to keep the Whittle program as described in the School Agreement with Whittle. On March 16, 1993, affiant appeared before the Board to report these survey results and to request the Board to allow Gainesville High School, and other schools, to choose to use, or not use, the Whittle Educational Network, including Channel One.

8. Through 1996, Affiant believed, and continues to believe, that Whittle's Educational Network as described in the School Agreement educationally benefitted the students at Gainesville High School and other schools. As a result of the use of the Whittle Educational Network including Channel One, many students were better informed as to current events on an international and national level and thereby better able to participate as informed adult citizens and better able to perform in related classes like social studies, history, and life management skills.

9. During the period when I was principal of Gainesville High School and Assistant Superintendent for Instruction, no parent, student, or faculty member asked affiant that they be excused from any TV programming under the School Agreement.

10. The limited commercial content contained in programming under the School Agreement (specifically as a part of Channel One) was not significantly different

than other commercial materials which students are exposed to everyday in schools. Such exposure comes from school newspapers, school yearbooks, the internet, classroom use of newspapers and normal commercial TV programming, advertisements by restaurants and vending machine companies, magazines used in the classroom, advertisements in athletic facilities like scoreboards, and other sources. In all of these instances, including the commercial segments of Channel One, exposure of students to commercial content is incidental to a program that serves the overall educational program of the school.

11. Affiant personally investigated the Whittle Educational Network including Channel One. Affiant continues to believe that the Whittle Educational Network including Channel One is an educational resource that will provide educational benefits in those schools that decide through their faculty, administration, and school advisory councils to use the program. Many students, if not most students, will gain valuable background for their social science, health, and other classes and will gain a better understanding of the world in which they will live if they are exposed to current events via the Whittle Educational Network including Channel One.

12. The District and School Agreement with Whittle ended as of May 1996 with the removal of equipment consistent with the Board decision to not renew the District Agreement. Affiant knows of no present plan to attempt to consider use of the Whittle Educational Network or Channel One at any time in the future.

Further affiant sayeth not.

/s/ William D. Boyd, Jr.
William D. Boyd, Jr.

Sworn to and subscribed before me this 13 day of August, 1996,

* * *

AFFIDAVIT OF RONALD D. NELSON

State of Florida

County of Alachua

Dr. Ronald D. Nelson ("Affiant"), being duly sworn, deposes and says:

1. Affiant is employed by the School Board of Alachua County as principal of Santa Fe High School. He has been employed in that capacity since 1992.

2. Affiant is trained as a professional teacher and administrator and has had experience as a teacher and administrator in excess of 20 years.

3. As principal of Santa Fe High School, affiant monitored implementation of the Whittle Communications' School Agreement including Channel One programs.

4. Affiant is aware of and participated in the decisionmaking process that led to the continuation of the School Agreement at Santa Fe High School until 1996. In summary, the Whittle School Agreement was implemented and continued at Santa Fe High School until 1996 with the concurrence of the administration, faculty, SAC (School Advisory Council), and good student and parent support.

5. In 1996, affiant in conjunction with the faculty, SAC, students and parents, decided to terminate use of the Whittle Educational Network including Channel One. That decision was made separate and apart from, and before, the decision of the Board to terminate the District Agreement that allowed schools like Santa Fe to choose to enter or continue a School Agreement for the Whittle

network. All Whittle equipment has now been removed from Santa Fe High School and there is no reasonable prospect that the Whittle Educational Network would be used at Santa Fe High School in the 1996-97 school year in view of the decision at Santa Fe to terminate its School Agreement.

6. Through 1996, Affiant believed, and continues to believe, that Whittle's Educational Network as described in the School Agreement educationally benefitted the students at Santa Fe High School and other schools. As a result of the use of the Whittle Educational Network, many students were better informed as to current events on an international and national level and thereby better able to participate as informed adult citizens and better able to perform in and benefit from related classes like social studies, history, and life management skills. As of 1996, however, the judgment at Santa Fe High School was to try alternative educational tools in an effort to achieve the same objectives.

7. During the period when I was principal of Santa Fe High School, no parent, student, or faculty member asked affiant that they be excused from any TV programming under the School Agreement except Mr. Robert Long. Mr. Long asked that his son, Daniel, be excused and the teacher arranged to have Daniel Long excused from the classroom when Channel One was shown as requested by Mr. Long.

8. The limited commercial content contained in programming under the School Agreement (specifically as a part of Channel One) was not significantly different than other commercial materials which students are exposed

to everyday in schools. Such exposure comes from school newspapers, school yearbooks, the internet, classroom use of newspapers and normal commercial TV programming, advertisements by restaurants and vending machine companies, magazines used in the classroom, advertisements in athletic facilities like scoreboards, and other sources. In all of these instances, including the commercial segments of Channel One, exposure of students to commercial content is incidental to a program that serves the overall educational program of the school.

9. Affiant personally investigated the Whittle Educational Network including Channel One. Affiant continues to believe that the Whittle Educational Network including Channel One is an educational resource that will provide educational benefits in those schools that decide through their faculty, administration, and school advisory councils to use the program. Many students, if not most students, will gain valuable background for their social science, health, and other classes and will gain a better understanding of the world in which they will live if they are exposed to current events via the Whittle Educational Network including Channel One.

Further affiant sayeth not.

/s/ Ron Nelson
Dr. Ronald D. Nelson

Sworn to and subscribed before me this 15 day of August, 1996,

* * *

AFFIDAVIT OF THOMAS J. MOFFETT, JR.

State of Florida

County of Alachua

Thomas J. Moffett, Jr. ("Affiant"), being duly sworn, deposes and says:

1. Affiant is employed by the School Board of Alachua County ("Board") as the Board's Director of Instructional Technology. An accurate and brief job description for affiant's current responsibilities is **Exhibit 1** to this affidavit.

2. Affiant is trained and experienced as an educator with special knowledge of educational resources like use of TVs in classrooms.

3. Affiant as a part of his general responsibilities for the Board became familiar with Whittle's Educational Network and in particular Channel One programming as a part of that network. For example, in preparation for the Board presentation made during the Board meeting of March 16, 1993, as reflected in the minutes of that Board meeting, affiant conducted an investigation of educational value of the Whittle Educational Network as implemented in Gainesville and elsewhere.

4. At the March 16,' 1993, meeting of the Board, affiant made an accurate presentation to the Board that included survey data that showed support for the Whittle Educational Network in the nine schools where that program had been implemented. In addition, affiant accurately reported to the Board on March 16, 1993, that the estimated cost to replace all the Whittle equipment

including satellite reception and TV equipment would be approximately $196,000.

5. At the March 5, 1996, meeting of the Board, affiant made an accurate presentation to the Board in support of the school administration's recommendation to renew the Whittle District Agreement for an additional three-year term. The Board, however, did not accept that recommendation and the Whittle District Agreement has now been terminated.

6. Affiant has personally observed students benefit from Channel One programs in the Board's schools. Affiant's observations are that many students gave attention to the Channel One programming and better understood current events ranging from international affairs to health issues. Such exposure undoubtedly provided many students preparation for classes such as history, life management skills, and social science and better prepared students to live their lives on an informed basis.

7. Affiant's observation of the Whittle Educational Network shows that no part of that network causes students to be coerced to do anything. First, students may choose not to watch the programming and simply refuse to benefit educationally from the Whittle Network; it was certainly possible for students to be inattentive during the Whittle programming and still graduate from Board high schools. Second, if the student watches the programming, then the student is not compelled to do anything as a result of watching the programming.

8. Affiant informed himself as to how various school representatives perceived the Whittle Educational Network including Channel One and a huge majority of

involved Board personnel, parents, and students believed, as does affiant, that the Network was educationally valuable.

9. Affiant watched many tapes of Whittle Educational Network programming including Channel One. Affiant made the judgment that it was unnecessary to review that programming every day prior to it being shown in the classroom because that programming was consistently of high quality and educationally beneficial.

10. The closed circuit TV systems in the Board schools sometimes are used to show regular commercial TV programming when teachers decide that that would be educationally beneficial. Commercial content in the Channel One programming was limited and not different from commercials on regular TV programming or in newspapers and magazines that are used as instructional resources in the Board's schools at the present time.

11. Affiant believes that it would not be practicable for the Board to do daily current events programming similar to the programming found in Channel One. Such current events programming requires international reporting and other resources that the Board simply does not have.

12. No administrators, teachers or students ever contacted me to complain about the content of the Whittle Educational Network including Channel One. To the extent that opposition exists to the Whittle Educational Network, as reflected in this lawsuit for example, that opposition is clearly a minority position and the great majority of concerned persons were enthusiastic at the

prospect of educational benefits achieved by reason of the Whittle Educational Network including Channel One.

13. In summary, Affiant believes that the Whittle Educational Network including Channel One programming was educationally beneficial to students in Board schools. The commercial content in that programming was not different than ordinarily experienced by students elsewhere and was incidental to the educational benefit of the programming like other commercialism that is commonly found in schools (like yearbook and school newspaper advertisements, advertisements in commercial eating facilities allowed in the schools, advertising from magazines, newspapers, and commercial TV programming used in the classrooms, advertising on the Internet, advertisements at athletic events, and so on).

Further affiant sayeth not.

/s/ Thomas J. Moffett, Jr.
Thomas J. Moffett, Jr.

Sworn to and subscribed before me this 15 day of August, 1996,

* * *

AFFIDAVIT OF DAVID C. LOCKE

State of Florida

County of Alachua

David C. Locke ("Affiant"), being duly sworn, deposes and says:

1. Affiant is employed by the School Board of Alachua County ("Board") as the Media Specialist at Springhill Middle School.

2. Affiant is trained and experienced as an educator with special knowledge of educational resources like use of TVs in classrooms.

3. Springhill Middle School elected to enter a School Agreement with Whittle and used the Whittle Educational Network including Channel One until May 1996 when that program was terminated.

4. Affiant as a part of his general responsibilities for the Board became familiar with Whittle's Educational Network and in particular Channel One programming as a part of that network. Affiant viewed many Channel One programs, discussed the programming with administrators, teachers, parents, and students, and assessed the educational value of the Whittle Educational Network including Channel One.

5. Affiant has personally observed students benefit from Channel One programs in the Board's schools. Affiant's observations are that many students gave attention to the Channel One programming and better understood current events ranging from international affairs to health

issues. Such exposure undoubtedly provided many students preparation for classes such as history, life management skills, and social science and better prepared students to live their lives on an informed basis.

6. Affiant's observation of the Whittle Educational Network shows that no part of that network causes students to be coerced to do anything. First, students may choose not to watch the programming and simply refuse to benefit educationally from the Whittle Network; it was certainly possible for students to be inattentive during the Whittle programming and still graduate from Board high schools. Second, if the student watches the programming, then the student is not compelled to do anything as a result of watching the programming.

7. Affiant informed himself as to how various school representatives perceived the Whittle Educational Network including Channel One and a huge majority of involved Board personnel, parents, and students believed, as does affiant, that the Network was educationally valuable.

8. Affiant watched many tapes of Whittle Educational Network programming including Channel One. Affiant made the judgment that it was unnecessary to review that programming every day prior to it being shown in the classroom because that programming was consistently of high quality and educationally beneficial.

9. Affiant knows that the closed circuit TV systems in the Board schools sometimes are used to show regular commercial TV programming when teachers decide that that would be educationally beneficial. Commercial content in the Channel One programming was limited and not

different from commercials on regular TV programming or in newspapers and magazines that are used as instructional resources in the Board's schools at the present time.

10. Affiant believes that it would not be practicable for the Board to do daily current events programming similar to the programming found in Channel One. Such current events programming requires international reporting and other resources that the Board simply does not have.

11. No administrators, teachers or students ever contacted me to complain about the content of the Whittle Educational Network including Channel One. To the extent that opposition exists to the Whittle Educational Network, as reflected in this lawsuit for example, that opposition is clearly a minority position and the great majority of concerned persons were enthusiastic at the prospect of educational benefits achieved by reason of the Whittle Educational Network including Channel One.

12. In summary, Affiant believes that the Whittle Educational Network including Channel One programming was educationally beneficial to students in Board schools. The commercial content in that programming was not different than ordinarily experienced by students elsewhere and was incidental to the educational benefit of the programming like other commercialism that is commonly found in schools (like yearbook and school newspaper advertisements, advertisements in commercial eating facilities allowed in the schools, advertising from magazines, newspapers, and commercial TV programming used in the classrooms, advertising on the Internet, advertisements at athletic events, and so on).

Further affiant sayeth not.

/s/ David C. Locke
David C. Locke

Sworn to and subscribed before me this 15th day of August, 1996,

* * *

AFFIDAVIT OF MARY W. OWENS

State of Florida

County of Alachua

Mary W. Owens ("Affiant"), being duly sworn, deposes and says:

1. Affiant is employed by the School Board of Alachua County ("Board") as the Media Specialist at Santa Fe High School.

2. Affiant is trained and experienced as an educator with special knowledge of educational resources like use of TVs in classrooms.

3. Santa Fe High School elected to enter a School Agreement with Whittle and used the Whittle Educational Network including Channel One until May 1996 when that program was terminated at Santa Fe and then by the Board.

4. Affiant as a part of her general responsibilities for the Board became familiar with Whittle's Educational Network and in particular Channel One programming as a part of that network. Affiant viewed many Channel One programs, discussed the programming with administrators, teachers, parents, and students, and assessed the educational value of the Whittle Educational Network including Channel One.

5. Affiant has personally observed students benefit from Channel One programs in the Board's schools. Affiant's observations are that many students gave attention to the Channel One programming and better understood current events ranging from international affairs to health

issues. Such exposure undoubtedly provided many students preparation for classes such as history, life management skills, and social science and better prepared students to live their lives on an informed basis.

6. Affiant's observation of the Whittle Educational Network shows that no part of that network causes students to be coerced to do anything. First, students may choose not to watch the programming and simply refuse to benefit educationally from the Whittle Network; it was certainly possible for students to be inattentive during the Whittle programming and still graduate from Board high schools. Second, if the student watches the programming, then the student is not compelled to do anything as a result of watching the programming.

7. Affiant informed herself as to how various school representatives perceived the Whittle Educational Network including Channel One and a majority of involved Board personnel, parents, and students believed, as does affiant, that the Network was educationally valuable.

8. Affiant watched many tapes of Whittle Educational Network programming including Channel One. Affiant made the judgment that it was unnecessary to review that programming every day prior to it being shown in the classroom because that programming was consistently of high quality and educationally beneficial.

9. Affiant knows that the closed circuit TV systems in the Board schools sometimes are used to show regular commercial TV programming when teachers decide that that would be educationally beneficial. Commercial content in the Channel One programming was limited and not different from commercials on regular TV programming or

in newspapers and magazines that are used as instructional resources in the Board's schools at the present time.

10. Affiant believes that it would not be practicable for the Board to do daily current events programming similar to the programming found in Channel One. Such current events programming requires international reporting and other resources that the Board simply does not have.

11. No administrators, teachers or students ever contacted me to complain about the content of the Whittle Educational Network including Channel One. However, affiant is informed that Mr. Robert Long asked the principal at Santa Fe to excuse his son, Daniel, from the classroom when Channel One was shown and Daniel Long was excused. Aside from the Long request, no other such request is known to affiant.

12. To the extent that opposition exists to the Whittle Educational Network, as reflected in this lawsuit for example, that opposition is clearly a minority position and the great majority of concerned persons were enthusiastic at the prospect of educational benefits achieved by reason of the Whittle Educational Network including Channel One.

13. In summary, Affiant believes that the Whittle Educational Network including Channel One programming was educationally beneficial to students in Board schools. The commercial content in that programming was not different than ordinarily experienced by students elsewhere and was incidental to the educational benefit of the programming like other commercialism that is commonly found in schools (like yearbook and school

newspaper advertisements, advertisements in commercial eating facilities allowed in the schools, advertising from magazines, newspapers, and commercial TV programming used in the classrooms, advertising on the Internet, advertisements at athletic events, and so on).

14. At the same time, affiant fully accepts the Santa Fe High School decision to end the Whittle Educational Network School Agreement. Affiant is presently working to attempt to achieve the same educational benefits, as achieved by the Whittle Educational Network including Channel One, by other means and methods.

Further affiant sayeth not.

/s/ Mary W. Owens
Mary W. Owens

Sworn to and subscribed before me this 15th day of August, 1996,

* * *

IN THE CIRCUIT COURT OF THE
EIGHTH JUDICIAL CIRCUIT, IN AND
FOR ALACHUA COUNTY, FLORIDA

ROBERT LONG and SHARON LONG, individually and as parents and next friends of minor Daniel Long, et al., Plaintiffs, vs. SCHOOL BOARD OF ALACHUA COUNTY, Defendant, and K-III COMMUNICATIONS CORPORATION, Intervenor.	)	CASE NO. 92-3214-CA DIVISION K

AFFIDAVIT OF CLAUDIA PETERS

State of New York

County of New York

Claudia Peters ("Affiant"), being duly sworn, deposes and says:

1. Affiant is the Executive Vice President for Network Affairs of the Channel One Network, owned and operated by K-III Communications Corporation ("K-III").

2. This affidavit sets forth information about the Channel One Network that is within my personal knowledge.

3. The Channel One Network is the leading provider of satellite-delivered, educational programming to America's secondary schools. The Channel One Network develops, produces and distributes educational programming including world news, current events, and feature programs.

4. Approximately 40% of students attending public, private and parochial secondary schools (grades 6 through 12) in the United States view the Channel One Network programming. Schools participating in the Channel One Network have entered into three-year contracts and have renewed contracts at a rate of 99% every year since 1993 (when the first contracts entered into in 1990 expired). The majority of non-renewals (only 1% of all participating schools) have been due to school consolidations or closings.

5. So that participating schools may receive the network programming and other programming of their choice, the Channel One Network normally provides participating schools the following equipment: a fixed KU-band satellite dish, headend and receiving equipment, two video cassette recorders, 19" color television sets mounted in classrooms throughout the school for grades 6-12 and internal wiring. The approximate value of this equipment package is $25,000 for each school using the Channel One Network. In its first six years, Channel One Network has installed more than $220,000,000 worth of equipment in schools in the United States. K-III not only installs this equipment, but also regularly maintains and services that equipment without cost to the schools.

6. The equipment provided to Channel One Network member schools is available for use by the schools for other purposes in addition to viewing the Channel One Network programming. Participating schools use the equipment for showing other educational videos, student-produced news shows and daily or weekly announcements, teacher in-service training programs, distant learning courses, daily and emergency announcements, video yearbooks, standardized tests or test instructions, programming for parent-teacher conferences, student elections, campaign speeches, and other purposes. The internal wiring provided by the network allows schools to view cable programming which cable companies normally provide without charge to the schools; the network allows distribution of the cable signals to each classroom via the network-provided cabling which the cable companies typically do not provide. As a result, use of commercial-free and commercial cable TV programming in the classrooms and use of videotapes is facilitated by the Channel One Network equipment package.

* * *

9. Channel One News anchor-reporters present news in a format and context relevant to teenagers in a timeframe that is nearly immediate so that students benefit from immediate news from around the world. Channel One has sent its correspondents, who range in age from 18 to 28, to gather news from locations across the United States and around the world, including: Afghanistan, Antarctica, Australia, Bolivia, Bosnia, Cambodia, Canada, China, Cuba, Egypt, England, France, Germany, Haiti, Iran, Iraq, Ireland, Israel, Japan, Korea, Mexico, Pakistan,

Russia, Rwanda, Serbia, Singapore, Somalia, South Africa, Vietnam, Yugoslavia and Zaire.

* * *

13. A three-year study (1992-94) was conducted by Dr. Jerome Johnston of the University of Michigan. An accurate copy of the entire study, dated January 1994, is attached hereto as **Exhibit 4.** As shown in **Exhibit 4,** the study found that students who regularly watch Channel One News regularly had a five to eight percent increase in awareness of current events. As with any educational resource, the impact upon students was not always the same and the benefit was no doubt a function of teacher and student effort to pay attention and make use of the Channel One News programming. The study also showed that 93% of teachers would recommend the programming to other schools and teachers, and that 86% of teachers agreed that Channel One News is a worthwhile educational tool for use of school time.

* * *

20. Channel One's contracts with the 12,000 schools who have elected to participate in the Channel One Network limits advertising to not more than two minutes of the 12-minute daily news program. A significant portion of this advertising time is used to broadcast public service announcements with educational messages for young people. Over $70,000,000 worth of free advertising has been provided to non-profit organizations promoting educational messages about drug abuse, alcohol abuse, drinking and driving, tobacco use, community service, and other important social issues. Advertising is accepted subject to standards considerably stricter than those used

by commercial TV broadcasters for time periods with high viewing by young people. For example, advertising for "R" rated movies, beer, feminine hygiene products, and political candidates is prohibited. Specific standards are typically set forth in district and school form agreements as was the case for the School Board of Alachua County (Florida).

21. Channel One Network has used a standard form contract, called a "District Agreement," with a school board or district, and a standard form contract for use with individual schools, a "School Agreement." The District Agreement is a board or district's authorization for individual schools to contract using the School Agreement. The forms currently being used when a District or School Agreement is executed include the following language:

> This Agreement does not require that all teachers use Channel One News or that all students or any particular student view Channel One News. The School may at its discretion develop appropriate procedures to accommodate students who do not wish to view Channel One News or whose parents do not wish them to view Channel One News.

K-III has not objected to any procedure adopted by any Channel One News participating school to accommodate students or parents who do not wish students to view Channel One News.

22. Channel One Network is intended to serve educational goals of the administrators, teachers and students and Channel One continues to make the program more useful to educators who are working everyday with

students across the United States and who have indicated, with a consistent 99% renewal rate, their belief that the Channel One Network is satisfying critical needs of their students.

Further affiant sayeth not.

/s/ Claudia Peters
Claudia Peters,
Affiant

Sworn to and subscribed before me this 3 day of October, 1996,

* * *

Supreme Court, U.S.
FILED
MAY 29 1998
OFFICE OF THE CLERK

No. 97-1477

In The

Supreme Court of the United States

October Term, 1997

ROBERT LONG and SHARON LONG, individually and as parents and next friends of minor Daniel Long, DANIEL LONG, JOHNNY MENDOZA, SR. and MIRIAM MENDOZA, individually and as parents and next friends of minor Johnny Mendoza, Jr., and JOHNNY MENDOZA, JR.,

Petitioners,

vs.

SCHOOL BOARD OF ALACHUA COUNTY, FLORIDA, and K-III COMMUNICATIONS CORPORATION,

Respondents.

On Petition For A Writ Of Certiorari To The District Court Of Appeal Of Florida, First District

REPLY BRIEF TO BRIEF IN OPPOSITION

JOSEPH W. LITTLE
Counsel of Record
3731 N.W. 13th Place
Gainesville, Fl. 32605
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Attorney for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

PETITIONERS' REPLY BRIEF

NEW POINT RAISED IN BRIEF IN OPPOSITION: DOES THE COURT POSSESS JURISDICTION?

In *Florida Star v. B.J.F.*, 530 So.2d 286 (Fla. 1988), the Florida Supreme Court addressed a certified question addressed to it by this Court, *The Florida Star v. B.J.F.*, 484 U.S. 984, 108 S.Ct. 499, 499, 98 L.Ed.2d 498 (1987), to clarify the question of when a decision of a Florida District Court of Appeal is a decision of the "highest state court empowered to hear the cause" within the meaning of the jurisdiction of this Court. In reply to this Court's certified question, the Florida Supreme Court stated:

> This court does *not*, however, have subject matter jurisdiction over a district court opinion that fails to expressly address a question of law, such as opinions issued without opinion or citation. *Thus, a district court decision rendered without opinion or citation constitutes a decision from the highest state court empowered to hear the cause, and appeal may be taken directly to the United States Supreme Court.*

530 So.2d at 288 n. 3. (Emphasis supplied). Quoted with approval, *Beaty v. State*, 701 So.2d 856, 857 (Fla. 1997).

The decision Petitioners submit for review in this petition is precisely of the sort that the Florida Supreme Court has stated to be the decision from the "highest state

court empowered to hear the cause." Accordingly, this Court does have jurisdiction.

Respectfully submitted,

JOSEPH W. LITTLE
Attorney for Petitioners
3731 N.W. 13th Place
Gainesville, Fl. 32605
352-392-2211